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LETTER DATED 17 DECEMBER 1999 FROM THE PRESIDENT OF THE GOVERNING COUNCIL OF THE UNITED NATIONS COMPENSATION COMMISSION ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

The Governing Council of the United Nations Compensation Commission held its thirty-fourth session at Geneva from 7 to 9 December 1999.

During the session the Council considered four reports and recommendations made by the Panels of Commissioners in the D, E2, F2 and F3 categories of claims (annexes I, III, V and VII). The category D report concerns individual claims for damages above US$ 100,000, the category E2 report concerns non-Kuwaiti corporate claims, the category F2 report concerns claims filed by the Government of Jordan and the category F3 report concerns claims filed by the Government of Kuwait. The tables provide details of the amounts of compensation claimed in the reports and the amounts awarded by the Governing Council.

The Council considered the eighth report of the Executive Secretary pursuant to article 41 of the Rules (annex IX), which concerned corrections to the approved amounts in the A and C categories of claims.

The Governing Council also considered the report of the Executive Secretary: summary of activities, covering the period from 11 August to 20 October 1999. The report concerns the processing of claims, requests for correction under article 41, the withdrawal of claims and the payment of approved claims and contains, as an annex, the 1999 progress report on the Commission's work programme (1997-2003).

The Council discussed several issues relating to the processing and payment of claims, including the mechanism for the third phase of payment. The Council requested further information from the secretariat on this issue and recommended that the matter remain on the agenda for discussion at future informal meetings of the Working Group and the next session of the Governing Council.

During the opening plenary meeting delegations from Iraq, Kuwait and Yemen addressed the Council. The Council subsequently discussed the issues raised in those interventions, including the specific request of Yemen to accept the late filing of a category F government claim. The Council recommended that the Government of Yemen and the secretariat provide further information on this issue, and that discussion of the matter be continued at the next informal meeting of the Working Group.

In the light of the information provided to the Council regarding the change in the situation of one of the Commissioners, the Council confirmed its practice of not appointing active civil servants as Commissioners.

The Council heard a report from the Committee on Administrative Matters on its meeting held on 18 November 1999. At that meeting the Committee approved, by consensus, the proposed budget for the biennium 2000-2001 in the amount of US$ 99,629,600.

Finally, the Governing Council decided to hold its thirty-fifth session from 14 to 17 March 2000.

(Signed) Hans J. HEINEMANN
President of the Governing Council

Annex I

Report and recommendations of the Panel of Commissioners concerning part one of the fourth instalment of individual claims for damages above US$ 100,000 (category D claims)*

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* Previously issued as document S/AC.26/1999/21.

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Summary recommendations of Part One of the fourth instalment of category "D" claims

Introduction

1. This is the sixth report to the Governing Council of the United Nations Compensation Commission (the "Commission") submitted pursuant to article 38(e) of the Provisional Rules for Claims Procedure (the "Rules"), by the "D1" Panel of Commissioners (the "Panel"), being one of two Panels appointed to review individual claims for damages above US$100,000 (category "D" claims). 1/ This report contains the determinations and recommendations of the Panel in respect of part one of the fourth instalment, comprising 850 of the 1050 category "D" claims in the fourth instalment, submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules on 26 January 1999.

2. The 850 claims contain loss types for which methodologies have already been developed ("application claims"). 2/ Part two of the fourth instalment comprises 200 claims for real property losses. As part of its review of those 200 claims, the Panel will develop the methodology for resolving the majority of real property claims in category "D". In order to allow sufficient time for the development of the methodology, and in view of the complex legal and valuation issues involved in resolving them, the Panel designated the 200 claims "unusually large or complex" pursuant to article 38(d) of the Rules and will review them within a period of twelve months.

3. The Panel began its review of the fourth instalment on 26 January 1999. In addition to regular communications, the Panel met at the Commission's headquarters in Geneva to consider the claims on the following dates: 25-26 January 1999, 22-24 March 1999, 26-27 April 1999, 24-26 May 1999 and 18-21 July 1999. Members of the Panel also visited Kuwait from 18-21 March 1999. During the visit, they met with a number of Kuwaiti Government officials and obtained information relevant for the resolution of claims in parts one and two of the fourth instalment, and for category "D" claims in general.

I. BACKGROUND

A. Background information

4. The factual background relating to Iraq's invasion and occupation of Kuwait that was taken into account by the Panel in reviewing claims in part one of the fourth instalment is set out in detail in the First and Second Reports. 3/

5. The Panel has taken into consideration additional relevant material, including information accompanying the submission of these claims provided by the Executive Secretary pursuant to article 32 of the Rules and additional information and views presented by Governments that have submitted claims, and by the Government of Iraq, in response to the reports submitted to the Governing Council by the Executive Secretary in accordance

with article 16 of the Rules. In addition, the Panel has been assisted by expert consultants in the valuation of claims for D4(personal property) losses.

B. General legal framework

6. The general legal framework for the resolution of category "D" claims is set out in chapter V of the Panel's First Report.

C. Applicable evidentiary standard

7. The issue of evidentiary standards to be applied in reviewing category "D" claims was addressed by the Panel in chapter VI of the First Report and chapter II of the Second Report. 4/ The Panel's recommendations in these two reports were approved by the Governing Council in decisions 47 and 49 respectively. 5/ As with previous instalments, the Panel has reviewed the claims in the present instalment and made its recommendations by assessing the documentary and other appropriate evidence as well as balancing the interests of claimants, who had to flee a war zone, with the interests of the Government of Iraq, which is liable only for damage caused as a direct result of its invasion and occupation of Kuwait.

II. NEW ISSUES ARISING IN APPLICATION CLAIMS

8. Some of the application claims in this instalment raise new issues that were not dealt with in any of the Panel's previous reports. These new issues and the Panel's determinations thereon are set out below.

A. Jurisdictional issues: Claims for losses that occurred outside the jurisdictional period

9. The Panel reviewed a number of claims for losses that occurred outside the jurisdictional period. One claim was for loss of personal property that a claimant asserts was lost as a result of his detention by Iraqi security forces from January to July 1990. Another claimant claimed for property that was stolen in June 1991. The Panel also considered a claim for household goods which appeared, from the evidence, to have been in the possession of the claimant as late as 1993. In all of the above circumstances, the Panel determines that the claimants have failed to prove that their personal property losses occurred as a direct result of Iraq's invasion and occupation of Kuwait and decides that the claims are not compensable.

B. D1(money) issues: Claim for expenses incurred as a result of an inability to leave Kuwait

10. The Panel has considered a claim for D1(money) losses for transportation and hotel expenses in Iraq. The claimant is a tetraplegic.

During the jurisdictional period, the Iraqi authorities seized the claimant's specially adapted hand-controlled motor vehicle from him in Kuwait. The claimant travelled to Iraq from his home in Kuwait to appeal to the authorities to return the vehicle, as he intended to use it to travel to a neighbouring country. Despite repeated requests, the authorities refused to release the vehicle to the claimant. The Panel finds that the claimant has shown a direct causal link between the expenses incurred in attempting to secure the release of his vehicle and the invasion and occupation of Kuwait, and that the claim is compensable. The claimant also submitted a claim for mental pain and anguish as a result of being forced to hide. The Panel determines that the circumstances show that he was not forced to hide, but that he was illegally detained by Iraqi authorities. The Panel has therefore treated the claim as one for illegal detention and recommends compensation accordingly.

C. D4(personal property)("D4(PP)") issues: Ownership, loss and causal relationship test ("OLC Test")

11. In some claims, claimants failed to submit any documentation in support of personal property losses, and have not responded to requests for additional information pursuant to article 34 of the Rules. Some claimants failed to prove their presence or residence in Iraq or Kuwait before or at the time of the invasion. In one case, the claimant was resident in Bahrain at the time of the invasion, while another claimant was studying in the United States of America and has failed to prove that he had a home in Kuwait. The Panel determines that no compensation should be awarded for any of those claims.

D. Claims for items not covered by the D4(PP) compensation methodology

12. As part of its review of the D4(PP) claims in part one of the fourth instalment, the Panel has reviewed claims for the following items not covered by the compensation methodology developed in part two of the second instalment. 6/

1. Boats

13. The Panel has reviewed claims for loss or damage to boats and determines that where a claim is for the total loss of a boat, compensation will be calculated based on the 1990 value. Depreciation will be calculated on the basis of the age of the boat at the time of loss and the nature of its use. The Panel decides that it will not recommend compensation for repair costs which exceed the value of the boat as at 1 August 1990.

2. Valuation of poultry, agricultural produce and trees

14. In part two of the second instalment, the Panel developed valuation tables for livestock, bloodstock and gold. Part one of the fourth instalment includes claims for poultry, agricultural produce and trees

which were not covered by the developed methodology. With the assistance of its expert consultants, the Panel has developed tables to be applied in the valuation of these items.

3. Claims for intellectual property

15. The Panel has reviewed a number of claims for intellectual property losses in part one of the fourth instalment. 7/ The Panel determines that there is a presumption of ownership in favour of the author of the work. The Panel further determines that in order to resolve any ownership issues that might arise in cases where claimants indicate that they were working under the auspices of a grant, it would be necessary to examine the terms of the grant to ascertain ownership.

E. D4(motor vehicle)("D4(MV)") issue: Valuation of motor vehicles for which no values are indicated on the motor vehicle valuation (MVV) table

16. The Panel found that there were a number of claims for motor vehicles which could not be valued using the Motor Vehicle Valuation Table. 8/ The secretariat assisted the Panel in arriving at 1990 market values for these claims by depreciating the claimed values. The applicable depreciation rates have been established in each case by taking into account the cost price and the year of purchase and/or the year of manufacture of the motor vehicle.

III. PANEL DETERMINATIONS ON OTHER CLAIMS IN PART ONE OF THE FOURTH INSTALMENT

17. The Panel has been conscious of the fact that in part one of the fourth instalment it has undertaken the consideration of the largest number of claims referred to it so far, and that all these claims have been designated application claims. At each of its meetings in Geneva, the Panel has therefore extensively reviewed individual claims, examined the application of the methodologies developed by the Panel and satisfied itself that the appropriate methodologies have been applied to the claims in the instalment. In the course of such examination, wherever claims gave rise to new issues not considered in previous instalments, the Panel ensured that these were resolved so as to be consistent with the methodologies established by the Panel.

18. The Panel defers its recommendations on a small number of claims because they contain loss types that cannot be resolved in part one of the fourth instalment. 9/

19. A number of claimants filed claims in category "D" specifically for interest on the value of their category "C" or "D" claims. In the First Report, the Panel determined that interest would be paid in accordance with Governing Council decision 16. 10/ The Panel notes that this is consistent with the recommendation of the Category "C" Panel of Commissioners in its

first report. 11/ Interest will be paid on all successful claims in both categories "C" and "D" as a matter of course at a later date.

20. The Panel has also considered a number of claims for preparation costs, including legal and loss adjusting fees. In a letter dated 6 May 1998, the Panel was notified by the Executive Secretary that the Governing Council intends to resolve the issue of claims preparation costs at a future date. Accordingly, the Panel takes no action with respect to the claims for such costs.

IV. CROSS CATEGORY ISSUES

Deductions of category "A", "B" and "C" awards

21. Pursuant to Governing Council decision 8, 12/ which caps awards for claims for mental pain and anguish, and recommendations by the Panel concerning awards approved in respect of related claims in categories "A", "B" and/or "C", 13/ the Panel recalls that in its First, Third, and Fifth reports, 14/ it reported all category "D" awards without deductions of awards in related claims in categories "A", "B" and "C" having been made, as not all category "C" claims had been resolved. Following the approval by the Governing Council of the last report of the Category "C" Panel of Commissioners, 15/ deductions of approved awards in respect of related claims in categories "A", "B" and/or "C" can now be effected. Recommended awards in respect of claims in part one of the fourth instalment and in future instalments will be reported net of deductions of "A", "B" and "C" approved awards.

V. RECOMMENDATIONS

A. Awards by submitting entity

22. The annex hereto lists the awards recommended by the Panel for each Government and international organization that has claimants included in part one of the fourth instalment. Each Government and international organization will be provided with a confidential list containing the individual recommendations made in respect of its claimants. As will be seen from the annex, against the total amount claimed of US$198,200,791.63, the Panel has recommended compensation totalling US$76,434,676.74.

B. Interest and exchange rates

23. The Panel recommends that interest be awarded pursuant to its determinations as set out in paragraphs 64-65 of the First Report.

24. For purposes of calculating recommended amounts, the Panel has converted currencies other than United States dollars into United States dollars in accordance with the rates set out in paragraphs 61-63 of the First Report.

25. In paragraph 39 of its Fifth Report, the Panel noted that where losses are claimed for money in currencies other than United States dollars and it is established from the evidence in the claim file that the application of the exchange rate approved by the Panel mentioned above would result in either under-compensation or over-compensation of the claimant, the Panel determined that it will select a conversion rate based on the evidence that most closely compensates the claimant for the value of the loss suffered. In particular, this would be applied in situations where the claimant has submitted evidence that he or she purchased the money at a rate different than the rate approved by the Panel.

C. Submission through the Executive Secretary to the Governing Council

26. The Panel respectfully submits this report through the Executive Secretary to the Governing Council, pursuant to article 38(e) of the Rules.

Geneva, 20 July 1999

(Signed) R.K.P. Shankardass
Chairman

(Signed) H.M. Joko-Smart
Commissioner

(Signed) M. C. Pryles
Commissioner

Notes

1/ S/AC.26/1992/10.

2/ In the first instalment of category "D" claims, the Panel developed methodologies for the following loss types: D1(money); D1(mental pain and anguish ("MPA"); D3(death); D4(motor vehicles); D6(loss of income); D10(payment or relief to others); and D10(other). A full description of the methodologies is set out at paragraphs 103 to 382 of the "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1998/1) ("First Report"). The Panel developed methodologies for the following loss types in part one of the second instalment: D2(personal injury) and D5(loss of bank accounts, stocks and other securities). These methodologies are described in the "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the Second Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1998/11) ("Third Report"), at paragraphs 41-116. Further, the Panel developed the methodology for D4 (personal property) losses in part two of the second instalment. This methodology is described in the "Report and Recommendations Made by the Panel of Commissioners Concerning Part Two of the Second Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1998/15) ("Fourth Report"), at paragraphs 30-57.

3/ See in particular chapter II of the First Report and chapter IV of the "Report and Recommendations Made by the Panel of Commissioners Concerning Part Two of the First Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1998/3) ("Second Report").

4/ See also paragraph 8 of Governing Council decision 7 (S/AC.26/1991/7/Rev.1) which provides that "[s]ince ... [D] claims may be for substantial amounts, they must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss". See also articles 35(2) and (3) of the Rules.

5/ S/AC.26/Dec.47 (1998) and S/AC.26/Dec.49 (1998).

6/ See paragraphs 35-51 of the Fourth Report.

7/ Following its previous decision, as set out in paragraph 24 of the Fourth Report, the Panel considered that these claims were properly within the D4(PP)loss type.

8/ See paragraphs 251, 267-272 of the First Report for a description of the MVV Table and the D4(MV) valuation methodology.

9/ The claims contain D7 (real property) and D8/9(business loss) losses for which methodologies are yet to be developed.

10/ Paragraph 1 of decision 16 (S/AC.26/1992/16) states that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". See also paragraphs 64-65 of the First Report.

11/ See page 33 of the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Individual Claims For Damages Up To US$100,000 (Category "C" Claims)" S/AC.26/1994/3.

12/ S/AC.26/1992/8.

13/ See paragraphs 84, 113, 222, 237, 211, 335 and 336 of the First Report; and paragraphs 54 and 55 of the Fourth Report.

14/ The Panel's "Report and Recommendations Made by the Panel of Commissioners Concerning The Third Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1999/9) ("Fifth Report") was approved by Governing Council decision S/AC.26/Dec.68 (1999).

15/ S/AC.29/1999/11 approved by Governing Council decision S/AC.26/Dec.70 (1999).

Annex

SUMMARY RECOMMENDATIONS OF PART ONE OF THE FOURTH INSTALMENT OF CATEGORY "D" CLAIMS

Submitting Entity	Amount claimed (US$)	Number of claims recommended	Number of claims not recommended for payment or (deferred) a/	Amount of compensation (US$)
Algeria	200,100.35	1	0	55,469.07
Australia	3,103,864.44	8	1	526,247.51
Austria	113,707.95	1	0	23,027.82
Belgium	566,826.00	1	1	700.00
Bulgaria	187,370.25	1	0	66,564.02
Canada	5,931,732.19	29	0	1,697,291.90
Denmark	426,544.25	3	0	73,219.55
Egypt	4,392,052.15	3	1	112,661.39
France	6,044,488.92	17	3 (1)	769,356.83
Germany	4,457,572.13	17	1	1,505,235.48
Greece	924,695.81	3	0	176,975.56
Ireland	204,509.85	2	0	83,656.58
India	47,507,873.26	190	6 (4)	9,104,304.40
Israel	3,901,543.76	2	0	201,163.50
Italy	2,327,524.45	9	1 (1)	530,580.59
Japan	1,000,325.00	3	0	379,936.20
Jordan	15,035,531.70	48	13 (7)	1,857,575.62
Kuwait	57,342,437.05	229	2 b/ (5)	42,068,963.28
Lebanon	4,744,460.39	17	0 (3)	2,168,800.48
Pakistan	2,418,992.14	15	1 (13)	875,447.63
Philippines	911,339.72	6	0	438,956.23
Poland	220,052.19	2	0	89,313.17
Singapore	123,512.28	1	0	56,668.79
Spain	111,470.00	1	0	6,228.00
Sudan	1,491,495.30	5	1 (1)	422,484.85
Sweden	1,552,328.47	8	0	895,837.98

/...

Submitting Entity	Amount claimed (US$)	Number of claims recommended	Number of claims not recommended for payment or (deferred) a/	Amount of compensation (US$)
Syria	1,308,846.01	7	0 (3)	587,627.92
Turkey	812,186.00	3	0	310,077.71
United Kingdom	16,738,876.53	78	5 (3)	6,455,839.41
United States of America	11,707,465.62	48	2 (3)	4,153,619.24
Yemen	394,885.81	1	0	110,048.24
UNDP Algeria	171,451.05	1	0	72,818.29
UNDP Kuwait	411,113.49	1	0	48,267.45
UNDP UAE	142,083.00	1	0	35,515.00
UNDP Washington	413,089.32	3	1	127,607.52
UNRWA Gaza	858,444.80	2	0	335,334.39
Total	198,200,791.63	767	39 (44)	76,423,421.60

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a/ Numbers in parentheses represent claims that have been deferred for reasons set out in paragraph 18 of the report.

b/ Includes one withdrawn claim.

/...

Annex II

Decision concerning part one of the fourth instalment of individual claims for damages above US$ 100,000 (category D claims) taken by the Governing Council of the United Nations Compensation Commission at its 92nd meeting, held at Geneva on 9 December 1999*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure, the report and recommendations made by the panel of Commissioners concerning part one of the fourth instalment of individual claims for damages above US$ 100,000 (category "D" claims), covering eight hundred and fifty claims,[1]

1. Approves the recommendations made by the panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amounts per country or international organization, as noted in the annex to the report, are as follows:

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* Previously issued as document S/AC.26/Dec.81 (1999).

[1] The text of the report appears in document S/AC.26/1999/21 (annex I above). In conformity with the provisions on confidentiality in the Provisional Rules for Claims Procedure (article 30, para. 1, and article 40, para. 5), a table containing the breakdown of the amounts to be paid to each individual claimant will not be made public, but will be provided to each respective Government and international organization separately.

Country or international organization	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (US$)	Amount of compensation recommended (US$)
Algeria	1	-	200,100.35	55,469.07
Australia	8	1	3,103,864.44	526,247.51
Austria	1	-	113,707.95	23,027.82
Belgium	1	1	566,826.00	700.00
Bulgaria	1	-	187,370.25	66,564.02
Canada	29	-	5,931,732.19	1,697,291.90
Denmark	3	-	426,544.25	73,219.55
Egypt	3	1	4,392,052.15	112,661.39
France	17	3	6,044,488.92	769,356.83
Germany	17	1	4,457,572.13	1,505,235.48
Greece	3	-	924,695.81	176,975.56
India	190	6	47,507,873.26	9,104,304.40
Ireland	2	-	204,509.85	83,656.58
Israel	2	-	3,901,543.76	201,163.50
Italy	9	1	2,327,524.45	530,580.59
Japan	3	-	1,000,325.00	379,936.20
Jordan	48	13	15,035,531.70	1,857,575.62
Kuwait	229	2	57,342,437.05	42,068,963.28
Lebanon	17	-	4,744,460.39	2,168,800.48
Pakistan	15	1	2,418,992.14	875,447.63
Philippines	6	-	911,339.72	438,956.23
Poland	2	-	220,052.19	89,313.17
Singapore	1	-	123,512.28	56,668.79
Spain	1	-	111,470.00	6,228.00
Sudan	5	1	1,491,495.30	422,484.85
Sweden	8	-	1,552,328.47	895,837.98
Syrian Arab Republic	7	-	1,308,846.01	587,627.92

Country or international organization	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (US$)	Amount of compensation recommended (US$)
Turkey	3	-	812,186.00	310,077.71
United Kingdom of Great Britain and Northern Ireland	78	5	16,738,876.53	6,455,839.41
United States of America	48	2	11,707,465.62	4,153,619.24
Yemen	1	-	394,885.81	110,048.24
UNDP Algeria	1	-	171,451.05	72,818.29
UNDP Kuwait	1	-	411,113.49	48,267.45
UNDP United Arab Emirates	1	-	142,083.00	35,515.00
UNDP Washington	3	1	413,089.32	127,607.52
UNRWA Gaza	2	-	858,444.80	335,334.39
Total	767	39	198,200,791.63	76,423,421.60

3. Reaffirms that when funds become available payments shall be made in accordance with decision 73 (S/AC.26/Dec.73 (1999)),

4. Recalls that when payments are made in accordance with decision 73 (S/AC.26/Dec.73 (1999)) and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), Governments shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. Notes that no recommendations have been made at this stage for 44 claims referred to at paragraph 18 of the report,

6. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and copies of the report and the tables containing the amounts to be paid to each individual claimant to each respective Government and international organization.

Annex III

Report and recommendations of the Panel of Commissioners concerning the third instalment of E2 claims*

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* Previously issued as document S/AC.26/1999/22.

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Governing Council decisions referred to in the present report

Decision No.	Title	Document No.
7	Criteria for additional categories of Claims	S/AC.26/1991/7/Rev.1
8	Determination of ceilings for Compensation for mental pain and anguish	S/AC.26/1992/8
9	Propositions and conclusions on compensation for business losses: types of damage and their valuation	S/AC.26/1992/9
10	Provisional rules for claims procedure	S/AC.26/1992/10
13	Further measures to avoid multiple recovery of compensation by claimants	S/AC.26/1992/13
15	Compensation for business losses resulting from Iraq's unlawful invasion and occupation of Kuwait where the trade embargo and related measures were also a cause	S/AC.26/1992/15
16	Awards of interest	S/AC.26/1992/16
19	Military costs	S/AC.26/Dec.19 (1994)

Panel reports and recommendations referred to in the present report

Short name	Title	Document No.
B(2.1) report	Report and recommendations made by the panel of Commissioners concerning part one of the second instalment of claims for serious personal injury or death (category "B" claims)	S/AC.26/1994/4
C(1) report	Report and recommendations made by the panel of Commissioners concerning the first instalment of individual claims for damages up to US$100,000 (category "C" claims)	S/AC.26/1994/3
C(7) report	Report and recommendations made by the panel of Commissioners concerning the seventh instalment of individual claims for damages up to US$100,000 (category "C" claims)	S/AC.26/1999/11
D(2.1) report	Report and recommendations made by the panel of Commissioners concerning part one of the second instalment of individual claims for damages above US$ 100,000 (category "D" claims)	S/AC.26/1998/11

Short name	Title	Document No.
The WBC Claim	Report and recommendations made by the panel of Commissioners appointed to review the Well Blowout Control claim	S/AC.26/1996/5/Annex
E1(3) report	Report and recommendations made by the panel of Commissioners concerning the third instalment of "E1" claims	S/AC.26/1999/13
E2(1) report	Report and recommendations made by the panel of Commissioners concerning the first instalment of "E2" claims	S/AC.26/1998/7
E2(2) report	Report and recommendations made by the panel of Commissioners concerning the second instalment of "E2" claims	S/AC.26/1999/6
E3(1) report	Report and recommendations made by the panel of Commissioners concerning the first instalment of "E3" claims	S/AC.26/1998/13
E3(2) report	Report and recommendations made by the panel of Commissioners concerning the second instalment of "E3" claims.	S/AC.26/1999/5
E3(3) report	Report and recommendations made by the panel of Commissioners concerning the third instalment of "E3" claims	S/AC.26/1999/1
E4(1) report	Report and recommendations made by the panel of Commissioners concerning the first instalment of "E4" claims	S/AC.26/1999/4
F1(1.1) report	Report and recommendations made by the panel of Commissioners concerning part one of the first instalment of claims by Governments and International Organizations (category "F" claims)	S/AC.26/1997/6
F1(1.2) report	Report and recommendations made by the panel of Commissioners concerning part two of the first instalment of claims by Governments and International Organizations (category "F" claims)	S/AC.26/1998/4
F1(2) report	Report and recommendations made by the panel of Commissioners concerning the second instalment of "F1" claims	S/AC.26/1998/12
F1(3) report	Report and recommendations made by the panel of Commissioners concerning the third instalment of "F1" claims	S/AC.26/1999/7

Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission"), at its twenty-first session in 1996, appointed the Panel of Commissioners composed of Messrs. Bernard Audit (Chairman), José-María Abascal and David D. Caron ("the Panel") to review claims filed with the Commission on behalf of corporations and other legal entities. This report contains the Panel's recommendations to the Governing Council, pursuant to article 38(e) of the "Provisional Rules for Claims Procedure" ("the Rules"), 1/ concerning the third instalment of claims reviewed by the Panel.

2. The instalment consists of 179 claims submitted by corporations operating in the transport sector. A description of the claims is set out in section I below. These claims were selected by the secretariat of the Commission from the "E2" claims on the basis of criteria established under the Rules. These include (a) the date of filing with the Commission, (b) the claimant's type of business activity, and (c) the type of loss claimed. Pursuant to article 38(d) of the Rules, the claims were reviewed by the Panel within 12 months of their receipt from the Executive Secretary. The procedure used by the Panel in processing the claims is described in section II below.

3. The role and tasks of a panel of Commissioners, the applicable law and criteria, the liability of Iraq and a description of the applicable evidentiary requirements are set forth in this Panel's first report. 2/ Within this framework, three tasks have been entrusted to the Panel in the present proceedings. First, the Panel must determine whether the various types of losses alleged by claimants are, in principle, compensable before the Commission. Second, it must verify whether the losses that are in principle compensable have in fact been incurred by a given claimant. Third, it must value those losses found to be compensable and in fact incurred. The implementation of these successive steps with regard to the present instalment is described in sections III to VI, followed by the Panel's recommendations in section VII.

I. THE CLAIMS

4. The claimants are companies from different parts of the world which are, or were, engaged in a variety of activities connected with air, shipping and road transport. The invasion of Kuwait on 2 August 1990 by Iraq, the subsequent occupation of that country and the Allied Coalition actions to liberate it, severely disrupted air, shipping and road transport to, from and within the Middle East region. As regards transport to and from Iraq and Kuwait, albeit for different reasons, operations virtually came to a halt.

5. Overall, claimants allege that Iraq's invasion and occupation of Kuwait directly caused a decline in revenue and an increase in costs of operations, as well as material losses (such as loss of property and equipment in Iraq and Kuwait). As described by claimants, the disruptions to transportation took many forms. In a number of instances, air, maritime and road transportation operations to the Middle East were cancelled. In other instances, operations that continued to the region were substantially reduced, and operations which had traversed the region to reach destinations in Europe or the Far East were re-routed. Coincident with the disruptions, there was a considerable increase in the cost of those operations that continued throughout the war. In addition to the immediate disruptive effect of Iraq's invasion and occupation of Kuwait, claimants also allege that the trade embargo and related measures implemented pursuant to resolutions of the UN Security Council both reduced traffic and limited the profitability of operations that continued.

6. Against this general background, the claims are described in greater detail for each of the transport sectors involved.

A. Claims submitted by companies engaged in the air transport industry

7. Many claimants from the airline industry have submitted claims for loss of profits resulting from discontinued or reduced operations to destinations to, from or within the Middle East. As well as a decline in activities, other claimants have alleged an increase in the cost of operations relating to war risk insurance premiums, fuel costs, re-routing of operations and staff costs. The claimants offer a variety of reasons for such losses, including dangers presented by on-going military operations, the threat of military action in the area and restrictions imposed by the trade embargo and related measures. Less often, the claimants allege that risks were posed by civil unrest in Iraq and Kuwait, and by the taking of hostages and other forms of illegal detention.

8. For purposes of analysis, the airline industry claimants are considered by the Panel as either "regional" or "global". A regional airline is an airline based within or in close proximity to the Middle East. A global airline is an airline based outside the Middle East with far-reaching operations, including some business activity in the Middle East.

9. Both categories present claims in respect of loss of profits resulting from suspended or cancelled scheduled services to Iraq, Kuwait and other locations in the Middle East, or the cessation of tourist charter flights to and from destinations in, inter alia, Cyprus, Egypt, Israel, Jordan and Turkey. One claimant seeks to recover for loss of profits resulting from the loss of use of an aircraft destroyed on the ground at Kuwait Airport during the hostilities.

10. Many airline claimants, primarily global airlines, maintain that they had to re-route flights to and from destinations in the Far East that had formerly over-flown the Middle East, thereby incurring additional costs.

11. A number of airlines seek compensation for the cost of additional premiums for war risk insurance. Most claimants maintained war risk insurance policies before the invasion of Kuwait. After the invasion, underwriters required the payment of "additional premiums" from airlines to maintain the cover under such policies for operations to destinations in the Middle East. Certain regional airlines, because they are based within an "additional premium area" designated by insurance underwriters for most of the duration of the hostilities, claim for considerable additional expenditure on insurance premiums. Claims are also submitted for additional war risk premiums levied in respect of special flights undertaken to assist in the return of nationals or on behalf of the International Committee of the Red Cross from locations in the Middle East.

12. Many airlines claim for increased fuel costs both on the basis of the general rise in the price of aviation fuel that occurred during the relevant period and of increased fuel consumption resulting from re-routing to avoid the conflict area.

13. Some claimants state that, in order to offset some of the additional costs of insurance premiums and fuel, they imposed surcharges on passenger fares and cargo rates as approved by resolutions of the International Air Transport Association ("IATA"). 3/

14. This instalment also includes airline claims for costs relating to evacuation operations conducted by claimants voluntarily, or by direction

of their national governments. Losses claimed include, inter alia, actual costs of the flights and the costs of transporting evacuees by land from Iraq and Kuwait to other locations from which the flights departed. In some cases, the profit allegedly lost from commercial operations through use of aircraft for evacuations is also claimed.

15. The claims of regional airlines contain types of losses not alleged by airlines based outside the region. For example, two of the regional airlines state that they had to relocate their entire fleets to locations in Europe and North America to avoid further increases in the war risk insurance premiums payable and because of the dangers posed by scud missile attacks. Such relocation allegedly resulted in major disruptions to their operations, as well as substantial additional costs.

16. Regional airlines also claim that the cancellation of operations by foreign airlines carrying passengers and cargo into the Middle East resulted in the disruption of contracts for transport-related services which they had, hitherto, provided to other airlines that stopped at airports in the region. These include the provision of catering services, ground handling services and, in one case, pilot training facilities. There are also claims for a decline in income from airport and in-flight duty free sales because of the reduction in the number of passengers during the period of the invasion and occupation.

17. Airlines that maintained offices in Kuwait and Iraq claim for the rental paid for periods during which they could not use such offices, generally from the date of the invasion until the cessation of hostilities and, in some cases, for an extended period thereafter. Certain airlines present similar claims in respect of offices in other locations, such as Damascus, Syria, and Amman, Jordan, during periods when operations to those destinations were suspended.

18. Claims have also been submitted for the loss of tangible property at premises located in Iraq and Kuwait. Some are in respect of furniture, equipment and vehicles that were at offices in Kuwait and Baghdad at the time of the invasion. There are also claims for aircraft components, tools, equipment and other tangible property which were stored at Kuwait and Baghdad airports at the time of the invasion. One airline claims for the losses arising from the fraudulent use of tickets stolen from its premises in Kuwait, as well as the cost of maintaining an IATA database system, from October 1990 to March 1994, to prevent the fraudulent use of such stolen tickets.

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19. Some claimants seek to recover the amount of salaries paid to staff located in Kuwait and Iraq whom, it is alleged, were unable to work because of the cessation of their operations or because of detention of such staff by Iraq. Also claimed are costs of relocation, severance payments and compensation provided to staff at claimants' offices in Kuwait and other locations in the Middle East. In a few instances, claims include costs relating to the loss or repair of lost or damaged household and other personal property of staff members in respect of which the claimants have made payments to those persons.

20. Furthermore, some claims are in respect of compensation paid to staff who were held as "human shields" or were otherwise illegally detained by Iraq. Certain claimants whose staff were detained also seek to recover the costs of establishing support centres and maintaining contact with employees' families, as well as costs of counselling and other assistance provided to staff and their families.

21. A number of airline claimants seek compensation for funds held in bank accounts in Iraq and Kuwait. Certain claimants also seek to recover sums owed but unpaid by sales agents based in Kuwait or, in one instance, in Iraq, at the time of the invasion.

22. Some claims are based on the breach of "interline" agreements, predominantly between Iraqi Airways and foreign airlines. Such agreements, concluded under the auspices of IATA, arrange monthly payments between airlines through a central IATA clearing house for, inter alia, the provision to each other of ground services and passenger and cargo transport services. 4/

23. One airline claimant seeks to recover in respect of payment on an earlier breached hotel management contract with the Government of Iraq, alleging that the invasion and occupation of Kuwait interrupted negotiations that would have secured payment from the Government of Iraq in respect of that breached contract. The same claimant also seeks to recover in respect of a hotel management contract being performed in Kuwait and allegedly interrupted by the invasion. Another claimant seeks compensation in respect of a contract concluded with Iraqi Airways to overhaul an aircraft belonging to that company.

24. In addition to losses sustained during the hostilities, some airline claimants seek costs incurred by them after the cease-fire in trying to rebuild their businesses, such as the costs of advertising, attending trade fairs and conducting promotional tours for tour operators, journalists and

travel agents, fees paid to public relations consultants and for related legal services.

25. Some regional airlines seek compensation for losses related to investment or financing costs that they allegedly incurred as a consequence of the invasion and occupation, including the consequences of a decline in operations. One such claim involves the sale of an aircraft at a price below the net book value because of liquidity problems allegedly caused by the invasion and occupation. Another claimant seeks compensation for interest that, it alleges, it would not have had to pay if the invasion of Kuwait had not caused a lack of foreign currency income and the postponement of the sale of an aircraft. Yet another regional airline claims that it was compelled to pay a "risk fee" which was added onto the interest payable on an existing loan.

B. Claims submitted by companies engaged in the shipping industry

26. Shipping operations in the Middle East were significantly affected by Iraq's invasion and occupation of Kuwait. It is widely accepted that at least 1,200 mines were laid by Iraq off the waters of Kuwait, many of which broke free and were later to be found throughout the northern parts of the Persian Gulf. The massive deployment of Allied Coalition naval forces in the Persian Gulf and the Red Sea also had an effect upon merchant shipping. Movements of ships were restricted, voyages to certain destinations were cancelled, and to others re-routed.

27. The shipping companies and, in some cases, their agents outside the region, allege a decline in their profitability during the period of the invasion. Many claimants assert that the inability to undertake or complete voyages destined for ports in the Middle East resulted in a loss of profits. Likewise, claimants allege that the activities of inspectors, acting pursuant to the UN authorized trade embargo against Iraq and Kuwait, resulted in restricted access to the Jordanian port of Aqaba which, prior to the imposition of the trade embargo, was the main sea port servicing Iraq in addition to Jordan itself. This restricted access, and requirements as to loading of cargo to facilitate inspection, are alleged by claimants to have resulted in substantial loss of profits. Ports in other countries in the region, including Egypt, Iran and Israel, are alleged by claimants to have been similarly affected by the UN authorized inspections.

28. Certain claims relate to the inability to gain access to vessels that were detained within the theatre of military operations during the relevant

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period. Thus, one claimant seeks recovery in respect of the loss of profits resulting from the detention for 21 days of one of its vessels which was in Kuwait at the time of the invasion; another claims in respect of a vessel which was on the Basra River in Iraq at the time of the invasion and was compelled by the Iraqi authorities to remain in Iraq.

29. Shipping claimants, like airlines, allege that they experienced significant increases in the cost of maintaining war risk insurance for voyages to and through the Middle East. Seventy-two claimants, notably, from Cyprus, Denmark, Greece, Italy, Liberia, Malta and Panama seek compensation for such additional insurance costs. Certain of these claimants were engaged in the provision of services to the Allied Coalition Forces.

30. A number of claims are also presented by shippers because certain organisations of shipowners, such as the Far Eastern Freight Conference, introduced a "Middle East emergency surcharge" intended to offset the costs of the additional war risk premiums which shipowners had to pay for voyages to the Middle East. Shippers of goods, who had contracted with shipowners to undertake transport operations, allege that they paid the surcharge and now seek to recover the amounts paid.

31. Compensation for additional costs is sought by certain of the shipping claimants in respect of the general increase in fuel prices for operations in the Middle East and world-wide and, in one case, in respect of operations within Europe.

32. Other additional shipping costs are also alleged to have been incurred as a consequence of the invasion and occupation of Kuwait, such as loss of the income-producing capacity of a vessel as a result of the inability to deliver and unload cargoes at destination ports in a timely manner.

33. A number of shipping claimants seek compensation for bonus payments made to maritime staff as incentives to work in the Red Sea and Persian Gulf waters. Certain claimants allege that war zone allowances were paid pursuant to "special collective agreements" concluded between the Greek Shipowners Association and the Greek Seamen's Federation, and ratified by the Greek Government. 5/ Other claimants paid war zone allowances to their crew in the absence of such agreements so that they could continue operations in the Middle East. In the case of one Saudi Arabian claimant, such payments were said to be necessary to enable the company to meet its existing contractual obligations. Additional costs incurred in the provision of protective equipment for staff and vessels at harbours and

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ports in these waters are also claimed. In the case of one claimant, this included the purchase of gas masks and the installation of extra security devices on vessels.

34. A number of claimants seek to recover under contracts with the Iraqi Shipping Line. Such claims relate to allegedly unpaid invoices in respect of agency services provided to the Iraqi Shipping Line at overseas ports and to the rental of shipping containers by the Iraqi Shipping Line.

35. As in the case of airline claimants, many shipping claimants seek recovery for non-payment of obligations by parties in Iraq and Kuwait. Others claim in respect of losses allegedly arising from their inability to perform contracts in respect of transport operations to Kuwait.

36. Tangible property losses are also claimed by shipping claimants, particularly in respect of the loss of shipping containers that were in ports in Kuwait and Iraq at the time of the invasion.

37. Many shipping claimants seek to recover the costs of evacuating their staff from Kuwait, Iraq, Dubai and other locations in the Persian Gulf, as well as nationals at the request of their governments.

38. Compensatory payments made to staff for distress allegedly caused by incidents related to the hostilities are also claimed. Thus, there are claims for payments made to crew members for mental suffering allegedly caused by their detention by Iraqi soldiers when vessels were seized in Kuwait; and for the cost of treatment for psychological distress allegedly caused to crew members during inspections conducted by Allied Coalition naval forces pursuant to the trade embargo.

C. Claims submitted by companies engaged in the road transport industry

39. The prevailing conditions earlier described are also alleged to have affected road transport activities. Operations to Iraq and other destinations were cancelled. Operations that were on-going at the time of the invasion experienced disruption and diversion, and employees who found themselves in the area faced the risks posed by conditions of civil disorder and the arbitrary actions of Iraqi officials.

40. Most of the claims submitted by road transport companies relate to the transportation of passengers and cargo to Iraq and Kuwait. The closure of borders by Iraq and then by countries neighbouring Iraq and Kuwait, as a measure implementing the trade embargo, had an immediate effect on

operations. Claimants also allege that military action, civil disorder and actions of Iraqi officials interfered with road transport operations. Claimants, thus, allege substantial decline of business, particularly because of their inability to complete existing transportation contracts. For example, companies based in Belgium, Egypt and Turkey assert losses due to the inability to perform contracts to provide transportation services to Iraq and Kuwait. In addition, claimants allege that they were forced to re-route or cease operations to other parts of the Middle East because it was unsafe to traverse Iraq and Kuwait.

41. The disruption of operations at the port of Aqaba in Jordan also provides the basis of many road transport claims. Operators from Jordan state that the reduction of the number of vessels calling at Aqaba port resulted in a drop in the volume of cargo to be transported on land to and from the port, causing a loss of profits in respect of international operations, particularly to Iraq, but also internally within Jordan.

42. Several road transport claimants allege losses resulting from the failure by Iraqi governmental entities to pay for services for the transport of goods to and from Iraq. Claimants also invoke the inability to perform contracts in respect of operations to Kuwait and other parts of the Middle East because of the conditions prevailing in Iraq and Kuwait. One road transportation claimant seeks to recover for alleged inability to perform contracts within Egypt.

43. One Jordanian claimant asserts that the proximity of military operations resulted in a substantial decline in passenger demand for the bus services that it provided in Amman and the surrounding metropolitan area.

44. A number of the road transport claimants seek to recover for the loss of tangible assets, including spare parts, tools and other equipment located in Iraq or Kuwait. For example, a claimant seeks compensation for furniture and equipment, as well as rental costs in connection with a campsite maintained in Iraq for the company's drivers. Losses relating to the destruction of or damage to trucks are also claimed, together with a loss of the income expected to be derived from such vehicles. Claims for increased costs of spare parts and maintenance costs are also submitted.

45. Claims are also made for payments of salaries of staff. One claimant seeks to recover payments made to families of drivers killed while driving tankers from Iraq.

II. PROCEDURAL HISTORY

46. Pursuant to article 16 of the Rules, the Executive Secretary of the Commission reported the significant factual and legal issues raised by the present claims in his twenty-fourth and twenty-fifth reports issued on 8 July 1998 and 13 October 1998, respectively. A number of Governments, including the Government of Iraq, submitted their information and views on the Executive Secretary's reports. These responses were transmitted to the Panel pursuant to paragraph 1 of article 32 of the Rules.

47. The secretariat made a preliminary assessment of the claims in order to ensure their compliance with the formal requirements established by the Governing Council in article 14 of the Rules. As provided by article 15 of the Rules, deficiencies identified were communicated to the claimants in order to give them the opportunity to remedy those deficiencies.

48. The Panel commenced its substantive review of the claims on 14 January 1999, when the claims were submitted to it by the Executive Secretary pursuant to article 32 of the Rules.

49. The Panel was assisted by accounting consultants, for a part of the review and analysis period, and by accountants within the secretariat, at all times (collectively referred to as "the accountants"). The secretariat, together with the accounting consultants, undertook a preliminary review of the claims in order to identify what additional information and documentation, if any, were required to allow the Panel to properly verify and value the claims. Pursuant to article 34 of the Rules, notifications were dispatched to claimants ("article 34 notifications"), in which they were asked to respond to a series of questions, generally of a standard nature, and to provide additional documentation. The information provided by the claimants in response to the article 34 notifications was used in the verification of the claims, and in the determination of the appropriate amount of compensation, if any, to be awarded to a given claimant.

50. The Panel also requested the secretariat to gather information on a number of issues relevant to the claims, including the range and use of Iraqi scud missiles during the period of Iraq's invasion and occupation of Kuwait, the operation of the war risk insurance market, the variation of oil prices during the relevant period, the international regulation of airline routes and the practice of airlines in relation thereto, and the extent of mine-laying in the Persian Gulf during the war.

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III. LEGAL ISSUES

51. The present instalment raises legal issues that have been addressed in previous reports of this and other panels of the Commission, as well as some new ones. In dealing with the former, the Panel will recall its earlier findings and elaborate on those findings to the extent required by the claims in the present instalment.

52. Firstly, the Panel gives further consideration to the requirement of directness under Security Council resolution 687 (1991), with particular regard to losses relating to the use of airspace and maritime areas outside Iraq and Kuwait. Secondly, the Panel considers a new legal issue, namely, the compensability of additional costs of business operations. Thirdly, the Panel considers the jurisdiction of the Commission as regards losses related to contracts with Iraqi private parties, also a new legal issue. Fourthly, the effect of the trade embargo and related measures as regards transportation operations is examined. Finally, the Panel considers the scope of a claimant's duty to mitigate losses.

A. The requirement of directness

53. Under Security Council resolution 687 (1991), the fundamental jurisdictional requirement for claims before the Commission is that the loss or damage be a direct consequence of the invasion and occupation of Kuwait. Paragraph 21 of Governing Council decision 7 provides guidance on the requirement of directness applicable to category "E" claims by listing five categories of events and circumstances that meet that requirement. 6/ As the Panel has already noted, however, paragraph 21 is not exclusive and leaves open the possibility that there may be causes of "direct loss" other than those enumerated. 7/

54. As in its first and second reports, the Panel must interpret the meaning and scope of the specific events and circumstances listed in paragraph 21 in the particular context of the claims under review. With regard to the transportation industry, the Panel must give specific consideration to the geographical area and time period within which certain losses may be considered to have been directly caused by the events identified in paragraph 21 of decision 7.

1. Military operations or threat of military action by either side

55. Paragraph 21(a) of decision 7 provides that loss or damage resulting from "military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991" is directly caused by the invasion and occupation of Kuwait.

56. In its second report, this Panel concluded that "military operations" included both:

> "actual and specific military activities by Iraq in its invasion and occupation of Kuwait, or by the Allied Coalition in its efforts to remove Iraq's presence from Kuwait. The geographic scope of military operations corresponds to the zone of combat as circumscribed by the actions of either side." 8/

57. The Panel determined, in particular, that the geographical scope of military operations did not include "remote locations utilized as staging areas for supplies and personnel or the airspace traversed when transporting such supplies and personnel". 9/

58. The Panel has already determined, in its first report, that a claimant seeking compensation for loss or damage resulting from a "threat" of military action in a location outside Iraq or Kuwait must make a specific showing that such loss or damage was caused directly by a "'credible and serious threat that was intimately connected to Iraq's invasion and occupation' and was within the actual military capability of the entity issuing the threat, as judged in the light of the 'actual theatre of military operations' during the period involved". 10/

59. The present instalment of transport claims calls for new determinations concerning the scope of military operations and threat of military action in locations outside Iraq and Kuwait, as well as the time periods during which these existed. In particular, the claims under review may require separate consideration of waters, airspace and land. 11/ The Panel now considers these issues with respect to the various locations and time periods in which losses are alleged to have been sustained, so as to delineate the limits of the compensable area and period ("the compensable area and period"). Where the record does not show that the losses arose from the claimant's operations in the compensable area and period, such losses are not compensable.

(a) Iraq and Kuwait

60. In its second report, the Panel, referring to the Allied Coalition Forces' military operations, decided that the geographical scope of those military operations included, in addition to the territories of Iraq and Kuwait, "such immediately adjacent land territory, waters and airspace as were a necessary part of the conduct of such operations". 12/ The Panel hereby determines that the adjacent waters and superjacent airspace of Iraq and Kuwait were the subject of military operations (and threats of military action) to the same extent as the land territory of those countries from 2 August 1990 to 2 March 1991. Accordingly, losses arising as a result thereof are, in principle, compensable.

(b) Saudi Arabia

61. The Panel recalls the findings contained in its first report, that "the evidence is clear that [Saudi Arabia] was credibly threatened with military action by Iraq during the period 2 August 1990 to 2 March 1991". 13/ Such threats "were sufficiently credible and serious, and intimately connected to the relevant military operations" to meet the requirements of paragraph 21(a) of decision 7. Furthermore, the actual launching of scud missiles by Iraq against Saudi Arabian territory between 18 January 1991 and 2 March 1991 constituted actual military operations for the purposes of paragraph 21.

62. The Panel confirms that losses sustained within the range of Iraq's scud missiles in Saudi Arabia, including the adjacent waters and superjacent airspace are, in principle, compensable for the period of 2 August 1990 to 2 March 1991.

63. In contrast, the Panel finds that Saudi Arabian locations on the Red Sea and in the southern part of the country, being outside the range of Iraq's scud missiles, were not the subject of a threat of military action by Iraq nor of actual military operations. Although locations in southern Saudi Arabia were used by Allied Coalition Forces, they must be regarded as "remote locations utilized as staging areas for supplies and personnel or the airspace traversed when transporting such supplies and personnel". 14/ Consequently, losses related to transport operations in those areas are not direct losses resulting from the invasion and occupation of Kuwait and are not compensable.

(c) Israel

64. In its second report, the Panel concluded that the repeated launching of scud missiles by Iraq upon Israel, beginning on 18 January 1991, and the assistance of Allied Coalition Forces aimed at eliminating or defending against such attacks, constituted "military operations". 15/ The Panel also determined that the threats directed against Israel by Iraq were serious and credible from 15 January 1991, the deadline under resolution 678 (1990) for Iraq's withdrawal from Kuwait, because such threats were linked to actions undertaken to remove Iraq's presence from Kuwait. 16/ Accordingly, the Panel decided that the entire territory of Israel was the subject of a threat of military action from 15 January 1991, and of actual military operations from 18 January 1991 to 2 March 1991.

65. The Panel considers that the launching of scud missiles endangered transport-related activities in the territory of Israel. Thus, the Panel determines that there were military operations and threat of military action, for the relevant periods, against the land, adjacent waters and airspace of Israel.

(d) Jordan

66. The Panel finds that, although Jordan was within the range of Iraq's military capability, Iraq did not direct a specific threat of military action against Jordan. However, with regard to Jordanian airspace, the Panel has already found that the launching of scud missiles by Iraq against Israel, commencing on 18 January 1991, constituted military operations. 17/ In order to reach their targets, the scud missiles directed against Israel often would have traversed Jordanian airspace; Jordanian airspace thus became a necessary part of the area of military operations by Iraq against Israel. Accordingly, the Panel determines that losses sustained by airline claimants directly resulting from the traversal of scud missiles through Jordanian airspace, or the threat thereof, are compensable, in principle, from 15 January until 2 March 1991.

67. While there was considerable disruption of operations to and from the Jordanian port of Aqaba, on the Red Sea, for the reasons further explained at paragraph 75 below, the Panel finds that these were a consequence of the trade embargo and the inspection measures taken to enforce it, and did not result from the threat of, or actual, military operations.

68. The Panel finds, therefore, that there was no threat of military action directed against, nor actual military operations in, the land territory or waters of Jordan.

(e) Bahrain and Qatar

69. This Panel has not previously considered whether there were military operations or threats of military action, by either side, directed against Qatar or Bahrain. 18/ This Panel finds that Qatar and Bahrain were subject only to the non-specific threats directed by Iraq against all members of the Allied Coalition.

70. The Panel notes, however, that Iraqi scud missiles struck Bahrain on 22 February and on the night of 25 February 1991; and struck Qatar on the night of 25 February 1991. 19/ Applying the criteria outlined in paragraphs 56-59 above, the Panel concludes that these events constituted military operations, the effects of which lasted until the cease-fire resolution came into effect on 2 March 1991. Accordingly, the Panel finds that, from the respective dates of these events until 2 March 1991, there were military operations or a threat thereof affecting the land, waters and airspace of Bahrain and Qatar. Therefore, losses caused by these events are, in principle, compensable.

(f) The United Arab Emirates

71. The Panel also considers for the first time whether military operations or the threat of military action existed in or against the United Arab Emirates. Applying the criteria outlined in paragraphs 56-59 above, with respect to the assessment of the existence of a threat or actual military operations in a location outside Iraq and Kuwait, the Panel concludes that there was no credible and serious threat of military action directed against the United Arab Emirates. The territory of the United Arab Emirates was beyond the known range of Iraq's scud missiles and any threat made against it by Iraq was part of the general hostility that was expressed by Iraq against all members of the Allied Coalition.

72. Although there was a substantial presence of Allied Coalition Forces in the United Arab Emirates during the hostilities, that presence was only for the provision of support to the actual military operations taking place in Iraq, Kuwait and northern parts of Saudi Arabia. The Panel finds, therefore, that the United Arab Emirates was a "remote location utilized as a staging area for supplies and personnel or the airspace traversed when transporting such supplies and personnel" 20/ and was not a location in

which there were military operations in the context of paragraph 21(a) of decision 7.

(g) The Persian Gulf

73. Claims in the present instalment allege disruption of shipping operations in the Persian Gulf. The Panel notes that mines were laid by Iraq in the Persian Gulf, in particular in waters off Kuwait where a "minebelt" of approximately 1,200 mines was laid. 21/ Based on warnings issued to merchant shipping between 2 August 1990 and 2 March 1991, the Panel finds that there was a grave risk posed not only by the mine field itself but also by the drifting of mines which had broken free. The areas affected included the waters surrounding Iranian ports such as Kharg Island and Bandar-e-Bushehr, as well as Saudi Arabian ports. Accordingly, the Panel concludes that Iraq's laying of mines in the northern part of the Persian Gulf, defined as the waters above the 27th parallel from the Saudi Arabian coast to the western Iranian coast, constitutes military operations within the meaning of paragraph 21(a) of decision 7.

74. There were occasional reports of drifting mines sighted in southern parts of the Persian Gulf. However, the Panel finds that these, being sporadic events, are insufficient to constitute military operations.

(h) The Red Sea

75. Many claims assert losses arising from the disruption of operations in the Red Sea. The Panel notes that the Allied Coalition Forces deployed naval vessels in the Red Sea. Nevertheless, it finds that no actual military operations were conducted therein nor were any credible or serious threats of military action directed at such locations. The military vessels in the Red Sea including aircraft carriers, hospital ships, tankers and other supply ships, were used as "staging areas for supplies and personnel" to the Allied Coalition Forces. 22/ Some vessels were also involved in the inspection procedures required to enforce the trade embargo and were not participating in the actual military operations against Iraq. The Panel finds that losses arising from activities in the Red Sea are, therefore, not compensable.

(i) Other locations

76. Other locations in varying degrees of proximity to the theatre of military operations are cited in the claims presently under review. In particular, losses are alleged to have been sustained in Cyprus, Egypt,

Morocco, Tunisia and Turkey. The Panel has previously determined that there were no military operations or threats of military action in those locations sufficient to meet the requirement of directness. 23/

(j) Summary: Compensable areas and periods

77. The Panel determines, therefore, that the locations designated below are, for the periods specified, the compensable areas applicable to the claims in the present instalment. 24/ In its second report the Panel found that in some instances the full resumption of business operations was not likely to have taken place immediately upon the cessation of military operations and consequently, that compensation should, in some instances, be allowed for a recovery period extending beyond 2 March 1991. The Panel notes, however, that the transportation sector is one which is generally adaptable to changing circumstances. 25/ The Panel therefore considers that claimants were in a position to resume business at normal levels soon after cessation of military operations. Locations and periods not specified below are not compensable areas and periods for the purposes of this instalment.

Location	Period
Iraq	2 August 1990 - 2 March 1991
Kuwait	2 August 1990 - 2 March 1991 */
Saudi Arabia (within the range of Iraq's scud missiles)	2 August 1990 - 2 March 1991
Persian Gulf north of the 27th parallel	2 August 1990 - 2 March 1991
Israel	15 January - 2 March 1991
Jordanian airspace	15 January - 2 March 1991
Bahrain	22 February - 2 March 1991
Qatar	25 February - 2 March 1991

*/ In respect of cancelled air operations to Kuwait, the compensable period is 2 August 1990 to 22 April 1991. See paragraph 119 below.

2. Departure of persons from or their inability to leave Iraq or Kuwait

78. Paragraph 21(b) of decision 7 provides that losses arising from the "[d]eparture of persons from or their inability to leave Iraq or Kuwait (or a decision not to return)" between 2 August 1990 and 2 March 1991 are caused directly by the invasion and occupation of Kuwait. Of the losses

claimed in the present instalment, this provision is most pertinent to the question of evacuation costs.

79. The compensability of evacuation costs has been considered extensively by this and other Panels. Compensable evacuation costs have been interpreted by the "F1" Panel as comprising those "costs incurred for transport, accommodation, food and urgent medical treatment". "Ancillary costs", such as costs of telephone calls, room service and bar and laundry bills were found not to be compensable. 26/ The "E3" Panel has determined that only costs which were "temporary and extraordinary expenses" related to the repatriation of employees, and which would not have been incurred by a claimant in any event, for example, in repatriating foreign staff at the end of a contract, are compensable. 27/

80. Two particular questions are raised in this instalment. Firstly, many of the claims under consideration relate to evacuation operations conducted by transport claimants which were not restricted to employees of the claimants and their families; in many cases, those transport claimants undertook large-scale evacuations of nationals, at the request of or under the compulsion of, their governments. Secondly, some claimants effected evacuations from countries other than Iraq and Kuwait.

81. With regard to the first question, the Panel recalls the determinations contained in its first report that costs incurred by a claimant in assisting its employees to depart from Iraq or Kuwait between 2 August 1990 and 2 March 1991 are compensable to the extent proven by the claimant and to the extent that such costs are "evacuation costs" within the scope of the definition outlined in paragraph 79 above. 28/ The Panel found that such evacuation costs clearly lay within the scope of paragraph 21(b) of decision 7. The Panel finds that the costs incurred by claimants in evacuating non-employees are, similarly, a consequence of the departure of persons from Iraq and Kuwait and are, therefore, directly caused by the invasion. 29/

82. Concerning the second question, this Panel, in its second report, concurred with the findings of the "F1" Panel that evacuation costs from outside Iraq and Kuwait were compensable if "a direct link can be shown where 'actual military operations' or 'an actual - as opposed to speculative - threat of military action' existed against a country from which persons were evacuated". 30/ This Panel also agreed with the "F1" and "C" Panels in concluding that "a claim based upon an incident occurring outside Iraq or Kuwait needs to be more fully substantiated in order to establish the necessary causal link between the invasion and occupation of

Kuwait and the alleged loss". 31/ Applying this standard, the Panel determines that costs incurred in respect of evacuations from Saudi Arabia between 2 August and 2 March 1991 and from Israel between 15 January 1991 to 2 March 1991, are also, in principle, compensable.

83. In the present instalment, some claims relate to evacuation of individuals who had formerly been in Iraq, Kuwait, Israel or Saudi Arabia but who had, as a first stage of their evacuation, been transported to safer locations, such as Syria and Jordan, prior to repatriation. The Panel finds that stop-over costs incurred at locations outside the home country of the evacuee, which are part of the on-going evacuation journey from Iraq, Kuwait, Israel and from the compensable area of Saudi Arabia, and which are not a significant interruption in that journey, are compensable on the same basis as costs incurred to evacuate individuals directly from these locations. 32/

3. Other circumstances under paragraph 21 of Governing Council decision 7

84. Paragraph 21(c) of decision 7 provides that loss or damage resulting from the "[a]ctions by officials, employees or agents of the Government of Iraq or its controlled entities during [the period of 2 August 1990 and 2 March 1991] in connection with the invasion or occupation" is caused directly by the invasion and occupation of Kuwait.

85. The present instalment includes claims for loss or damage arising from the actions of Iraqi agents, for example, the seizure of vessels, the detention of employees and the theft of tangible property or cash in Kuwait and Iraq at the time of the invasion. If occurring during the relevant period, such losses clearly fall within the scope of paragraph 21(c).

86. The Panel notes that the direct link between the invasion and certain losses alleged in this instalment may also be established by reference to the events and circumstances described in paragraphs 21(d) and (e) of decision 7, namely, a breakdown of civil order and hostage-taking and other illegal detention. 33/ Iraq and Kuwait experienced such events between 2 August 1990 and 2 March 1991. Their potential consequences in the present instalment will be examined more fully in section IV below in connection with the compensability of particular losses.

B. Losses arising from increased costs of business operations and the impact of intervening acts

87. The issue of whether alleged losses for increased costs of business operations can be direct consequences of the invasion and occupation of Kuwait is not addressed specifically by any decision of the Governing Council, including decision 9, which deals with compensation for business losses. However, decision 9 does not purport to be exhaustive. The decision recognises that other types of losses may be eligible for compensation and provides that Commissioners may identify applicable principles. 34/

88. Four main types of increased costs are claimed in the present instalment. They relate to additional war risk insurance premiums, increased costs of fuel, costs of re-routing and additional staff costs.

1. Increase in charges for war risk insurance

89. The majority of claims for increased costs relate to war risk insurance premiums. After the invasion of Kuwait, underwriters, exercising the option that they had under standard war risk insurance clauses, declared certain locations to be destinations in respect of which additional premiums were payable if war risk insurance cover was to subsist (thereby generally defining what was known as an "additional premium area"). Additional premiums thus were levied in respect of shipping and airline transport operations to destinations in the Middle East which, in the underwriters' opinion, had become unsafe as a result of the invasion and occupation of Kuwait. While the compensability of war risk insurance premiums was briefly addressed in a specific context by the "F1" Panel in its third report, that Panel did not make a finding regarding the directness of such costs per se. 35/

90. There exists little international jurisprudence which specifically addresses the compensation of increased costs of war risk insurance. In the War-Risk Insurance Premiums claims 36/ and in the Eastern Steamship Lines, Inc. (United States) v. Germany, 37/ the United States/Germany Mixed Claims Commission held insurance premiums to be too remote to justify compensation. However, the liability of Germany under the Treaty of Berlin vis-à-vis claims of United States nationals was limited to "losses, damages, or injuries to them, ... suffered directly or indirectly during the war period, caused by acts of Germany or her agents in the prosecution of the war". 38/ This may be contrasted to the mandate of the present Commission, as established under resolution 687 (1991), which confirms

/...

Iraq's liability for "any direct loss, damage,... as a result of Iraq's unlawful invasion and occupation of Kuwait". The liability of Iraq is not limited, as in the case of the United States/Germany Mixed Claims Commission, to losses resulting from the acts of Iraq or its agents, but covers all losses resulting directly from the invasion and occupation of Kuwait.

91. Paragraph 21 of decision 7 provides that losses resulting from the actual military operations or threat of military actions by either side are a direct result of the invasion and occupation of Kuwait. The Panel finds that additional premiums paid in respect of transport to, from and within locations that were subject to actual military operations or the threat of military action, as identified in section III(A) above, are compensable; and that they are so for the periods during which such operations or threat existed to the extent that such premiums were levied as a result of them. Insofar, however, as war risk insurance premiums covered risks other than military operations or the threat thereof, such as terrorist attacks, the Panel finds that part of the premiums do not result directly from Iraq's invasion and occupation of Kuwait and are, accordingly, not compensable.

92. The Panel must consider whether the decision of underwriters to impose additional premiums as regards certain destinations constituted an intervening act breaking the chain of causation. The Panel finds that such a decision, although an independent act, was a reasonably foreseeable consequence of the invasion and occupation of Kuwait as regards certain destinations and, to that extent, does not therefore break the chain of causation between the invasion and the loss suffered. 39/

93. Accordingly, the Panel finds that additional war risk insurance premiums were a direct result of the invasion and occupation of Kuwait and are, in principle, compensable as an increased cost of operations. 40/ This is subject to geographical and time limitations as set out at paragraph 77 above.

2. Increased costs of fuel

94. Many of the claims under review allege increased costs of fuel as a result of a substantial, world-wide increase in the price of crude oil following Iraq's invasion of Kuwait.

95. The Panel notes that there was, indeed, a significant rise in oil prices, beginning in August 1990. However, that increase soon abated, so that by January 1991, prices had almost reverted to their pre-invasion levels. 41/ It thus appears that the temporary hike was the effect of

market forces, presumably driven by the enforcement of the trade embargo and the expectation of oil shortages that in fact never materialized. This view is reflected in decision 15 of the Governing Council, citing the temporary increase in the price of oil as an example of the economic situation caused by the trade embargo, which is not to be accepted as a basis for compensation. 42/

96. Based on these findings, the Panel concludes that the increase in oil prices was not a direct consequence of the invasion and occupation of Kuwait and, therefore, that additional costs as a result thereof are not compensable.

3. Increased costs from re-routing

97. Most of the claims relating to re-routing are submitted in connection with the operations of airlines. Accordingly, the Panel's discussion on this issue will concentrate on the practice of the airline industry. 43/ As alleged by such airline claimants, the conflict necessitated the re-routing of flights to and from various destinations, such as Hong Kong or Singapore, which had formerly over-flown the Middle East. 44/

98. The Panel investigated the re-routing of airlines during the Gulf War through communications with officials of the International Civil Aviation Organisation ("ICAO") and IATA. The Panel considered documents delineating pre-war routes over the Middle East and the contingency routes for re-routing established by ICAO. In several communications, the Panel was also supplied with information by ICAO and IATA concerning industry practices as regards the re-routing of flights.

99. The Panel finds the cost of re-routing not compensable for the following reasons. The Panel's earlier findings define a theatre of air military operations as including the airspace of Iraq, Kuwait, part of Saudi Arabia, Israel and Jordan, an area significantly smaller than the area of re-routing. Re-routing is a common occurrence in air transport due to a number of events such as congestion of traffic and weather conditions. As such, re-routing is factored into the calculation of operating costs by civil carriers. The Panel, moreover, notes that the contingency routes defined by ICAO at the time continued to be used after the cease-fire. Those circumstances combined make it practically impossible to identify and assess re-routing costs, if any, which would have been directly caused by the invasion and occupation of Kuwait.

4. Additional staff costs

100. Many claimants, particularly in the shipping industry, allege that they incurred additional staff costs, in the form of overtime payments and bonus payments made as incentives to employees so as to enable claimants to continue their operations in the Middle East area during the hostilities. Certain of these payments were made pursuant to agreements concluded between shipowners' associations and seamen's unions. 45/ Others were made to crew in the absence of such agreements. The Panel finds that additional payments, where related to the compensable areas and periods, are directly caused by the invasion and occupation of Kuwait. Consequently, they are compensable to the extent that they were reasonable in amount.

C. Directness and decline in business

101. In the present instalment, decline in business claims are made by claimants based both within and outside the compensable area. In its second report, this Panel, dealing with claimants based within the compensable area, determined that compensation may be awarded "for profits which, in the ordinary course of events, [the claimant] would have been expected to earn and which were lost as a result of a decline in business directly caused by Iraq's invasion and occupation of Kuwait". 46/

102. The Panel determines that, where a claimant based outside the compensable area maintained a presence within that area by way of a branch, agency or other establishment, decline in business losses are compensable under the same conditions.

103. Where claimants based outside the compensable area and without a presence in the compensable area seek to recover in respect of a decline in business, the Panel finds that such claims are to be evaluated under paragraph 11 of Governing Council decision 9. The provision states:

> "Where a loss has been suffered relating to a transaction that has been part of a business practice or course of dealing, Iraq is liable according to the principles that apply to contract losses. No liability exists for losses related to transactions that were only expected to take place based on a previous course of dealing."

104. Paragraph 11, thus, recognises that Iraq may be liable for losses arising from a transaction that has been part of a business practice or course of dealing. The Panel notes, however, that the second sentence of paragraph 11 narrowly limits the scope of such compensability.

105. In particular, with respect to the claims under review, a claimant without a presence in the compensable area must satisfy a high evidentiary standard. The Panel finds that a decline in business claim is compensable under paragraph 11 where the claimant shows that there was a regular course of dealing with another party, demonstrating that the claimant had a well-founded expectation of further business dealings of the same character with the same party under readily ascertainable terms and, in addition, that a consistent level of income and profitability had been realized from such dealings. A mere showing of past earnings from operations to locations in the compensable area will be insufficient to establish a course of dealing giving rise to compensable losses.

D. The jurisdiction of the Commission and Iraqi private parties

106. In the present instalment, claims are submitted in respect of losses relating to contracts with Iraqi private parties. The Panel must consider whether (a) the criteria under paragraph 8 of Governing Council decision 9, which deals with the compensability of losses arising from "contracts with Iraq"; 47/ and, (b) the exclusion in paragraph 16 of Security Council resolution 687 (1991) of the Commission's jurisdiction over debts and obligations of Iraq arising prior to the invasion of Kuwait apply equally to Iraqi private parties as to governmental entities.

107. In its first report, the Panel defined "Iraq" for the purposes of paragraph 8 of decision 9 as being the Government of Iraq, its political subdivisions, or any agency, ministry, instrumentality or entity controlled by the Government of Iraq. The Panel notes, however, that the five contracts under review in that instalment were limited to contracts with Iraqi governmental entities and that the Panel's definition was based on the facts before it in those claims. 49/

108. As regards paragraph 16 of resolution 687 (1991), by virtue of which debts or obligations of Iraq arising prior to the invasion are to be addressed not through the Commission but through the normal mechanisms, the Panel noted, in its first report, that "the most widely-shared international definitions of the phrase 'foreign debt' includes any debt incurred both by the State (public debt) and its residents (private debt)". 50/ The circumstances underlying the Panel's interpretation of the "arising prior to" exclusion in that report apply to both Iraqi public and private parties. Iraq's foreign debt would distort payment terms and practices under contracts with Iraqi private parties as well as those with public entities. The Panel notes that foreign exchange, upon the availability of which private parties depended to settle their debts,

remained at all relevant times under the control of the Iraqi Government. The Panel finds, therefore, that there is no basis to distinguish between Iraqi private and public parties for the purposes of the Commission's jurisdiction over debts and obligations arising prior to 2 August 1990. 51/ For the reasons outlined above, the Panel considers that paragraph 8 of decision 9 applies equally to private Iraqi parties as well as to Iraqi Government entities.

E. Effects of the trade embargo and related measures

109. Under Governing Council decisions 7, 9 and 15, losses that are solely attributable to the trade embargo and related measures, or the economic situation caused thereby, are not compensable. 52/ These Governing Council decisions, nevertheless, permit compensation to be awarded when the invasion and occupation are a separate and distinct cause of the loss notwithstanding the existence of the trade embargo; 53/ and where the invasion and occupation and the trade embargo are found to be parallel causes of the loss. 54/

110. The trade embargo applied to transport operations relating to the carriage of commodities or products to Iraq and Kuwait. The issue now presented to the Panel is whether the trade embargo was the sole cause of the cancellation, diversion and delay of transportation operations to and from the Middle East, particularly with regard to operations in connection with Iraq or Kuwait.

111. In the present instalment, claims are submitted in respect of transport operations for the carriage of commodities or products which were intended to be brought to or removed from Iraq or Kuwait on or after 6 August 1990. Such operations were subject to the provisions of the trade embargo. The Panel finds that the losses resulting in connection therewith are not compensable if caused solely by the embargo or the inspection procedures. 55/ If, however, the invasion and occupation of Kuwait constitutes an independent cause or a parallel cause of such losses, these losses are compensable.

112. With respect to transport operations to Iraq under review, the Panel determines that losses in connection with such operations arising after 2 March 1991 were not directly caused by the invasion and occupation of Kuwait.

F. Mitigation of losses

113. The Governing Council has established that claimants before the Commission had a duty to mitigate their losses. 56/ Certain claimants allege that they reduced losses arising from the disruption of transport services which resulted from the invasion and occupation of Kuwait. For example, some airline and shipping claimants state that they passed on a portion of their increased costs for fuel and insurance by increasing fares for passenger and freight services. Similarly, some ship owners state that they passed on some of their additional costs for, *inter alia*, war bonus payments and insurance, to shippers by means of revised fees payable under charter parties.

114. This Panel, in its first report, gave consideration to the scope of the duty to mitigate in the context of claims for tangible property losses. It found, first, that the duty to mitigate only requires the claimant to do what was reasonable under the circumstances and no more; but also that when a loss could reasonably have been avoided, any award of compensation must be reduced as described in section V below, to the extent that the claimant did not take such reasonable steps. 57/

115. The Panel must also consider the compensability of costs incurred by a claimant in taking steps in mitigation. A few claimants assert that they incurred such costs, for example, in relocating their fleets to airports outside the compensable area, in modifying their operations or in undertaking promotional activities to rebuild their businesses. In its first report, the Panel determined that costs incurred in respect of steps taken in mitigation are compensable "[i]f it is found that such steps were undertaken in good faith and were reasonable in cost". 58/ The "E3" Panel, in its second report, made the finding that "costs incurred in taking reasonable steps to mitigate the losses incurred by the claimant are direct losses, bearing in mind that the claimant was under a duty to mitigate any losses that could reasonably be avoided". 59/ The Panel finds, in keeping with these earlier determinations, that costs incurred by a claimant in taking steps in mitigation of compensable losses are recoverable insofar as such costs were reasonable in nature and amount.

116. Having regard to the high fixed costs of the transportation industry, the Panel considers that continuation of operations, even at a loss, may constitute reasonable steps taken in mitigation, further justifying compensation for a resulting decline in revenues. The Panel shall consider the reasonableness of the particular steps taken or not taken by claimants in mitigation in the context of the compensability of individual losses in section IV below.

IV. COMPENSABILITY OF THE LOSSES CLAIMED

117. The Panel notes that the claims in this instalment raise a wide variety of loss types and that the claimants have presented similar losses in different ways. To allow consistency in the analysis of the claims, the Panel has re-categorized certain of the losses using the following classifications. Among the many claims for loss of profits, the Panel has distinguished those stemming from cancelled operations, decline in business and increased costs of operations respectively. The Panel has also considered contract-related losses, evacuation costs, tangible property losses, losses relating to premises and losses relating to bank balances in Kuwait and Iraq. Those losses which do not fall within this classification were grouped, and are considered in a final sub-section.

A. Cancelled operations

118. Several claimants allege loss of revenue in connection with scheduled transport operations that were entirely cancelled. The compensability of such claims is analysed with regard to the various locations involved.

1. Iraq and Kuwait

119. As previously determined by the Panel, and as reiterated at paragraph 60 above, there were military operations and a threat of military action in Iraq and Kuwait from 2 August 1990 to 2 March 1991. As regards airline operations to Kuwait, the Panel notes that regular operations of foreign airlines did not resume until 22 April 1991, which warrants an extension of the compensable period to that date for losses relating to such operations. 60/

120. Although the trade embargo may have contributed to the cancellation of transport operations, the Panel finds that during the periods defined in the previous paragraph, it was merely a parallel cause to military events and, thus, does not preclude recovery of ensuing losses before this Commission.

121. Consequently, the Panel decides that the loss of revenue from cancelled air transport operations to Kuwait between 2 August 1990 and 22 April 1991, as well as from cancelled shipping and road operations to Kuwait between 2 August 1990 and 2 March 1991, are compensable. All cancelled air, shipping and road transport operations to Iraq between 2 August 1990 and 2 March 1991 are compensable.

2. Saudi Arabia

122. With regard to Saudi Arabia, the Panel finds that losses arising from cancellation of transport operations to, from and within locations within the range of scud missiles used by Iraq between 2 August 1990 and 2 March 1991 are, in principle, compensable. As stated in section III(A)(1)(b) above, losses sustained in locations with respect to Saudi Arabia which lay outside the range of scud missiles are not compensable.

3. Israel

123. The Panel reiterates its finding in its second report, described at paragraph 64 above, that the threat of military action and the actual military operations directed at Israel were intimately connected to Iraq's invasion and occupation of Kuwait, so that losses resulting from such threat or operations are compensable. 61/ The Panel finds that losses resulting from the cancellation of all transport operations to, from and within Israel come under this previous holding and are compensable, in principle, if suffered during the period from 15 January to 2 March 1991.

4. Jordan

124. A number of transport claimants allege losses resulting from cancellation of operations to, from and within Jordan. As explained at paragraph 68 above, the Panel finds that the land territory of Jordan and its waters were not the subject of military operations or the threat of military action. Accordingly, the Panel concludes that losses claimed in the present instalment relating to the cancellation of shipping transport operations to and from Jordan, and road transport operations to, from and within Jordan, are not compensable.

125. As also stated in paragraph 66 above, there was a threat of military operations and subsequent actual military operations in the airspace of Jordan between 15 January and 2 March 1991. Accordingly, the Panel finds that losses to airline claimants directly caused by military operations or the threat thereof between the stated dates are, in principle, compensable.

5. Bahrain and Qatar

126. It follows from the findings laid out at paragraph 70 above, that losses specifically shown to have resulted from scud missile strikes on Bahrain on 22 February 1991, and on Qatar on the night of 25 February 1991, and from the possibility of further attacks, are compensable from the

respective dates until 2 March 1991. The Panel concludes, therefore, that losses from cancelled operations to Bahrain and Qatar under those conditions are, in principle, compensable.

6. Other destinations

127. Airline claimants allege losses in connection with the cancellation of operations to and from, inter alia, Cyprus, Egypt, Syria, Turkey and the United Arab Emirates. Shipping claimants allege losses in connection with operations to ports located in the southern part of the Persian Gulf, the Suez Canal and the Red Sea. Road transport companies allege losses in connection with cancelled operations to and from, inter alia, Egypt, Turkey and Tunisia.

128. The Panel finds that if a claimant cannot show that the cancellation of a transport operation was in connection with a location within the compensable area as summarised in paragraph 77, losses resulting from such cancellation are not compensable.

B. Decline in business

129. Many of the claims in the present instalment assert a general decline in business in respect of operations conducted world-wide, as well as to, from, and within the Middle East. The Panel distinguishes between those claimants with a presence, such as a branch, agency or other establishment, in the compensable area, and those claimants who did not maintain such a presence. While the former's losses are normally compensable in accordance with the principles enunciated by the Panel in its second report, 62/ the latter's losses will be subject to greater scrutiny. 63/ The Panel now considers these two situations in turn.

1. Claimants maintaining a presence within the compensable area

(a) Airline claimants

130. Given the on-going military operations and threat thereof, the Panel finds that it was reasonable, particularly in view of the paramount safety considerations of the airline industry, for claimants with a presence in the compensable area to have reduced operations to and from available airports within that area. Accordingly, the Panel finds that losses resulting from such reduction of operations are compensable. To the extent that the losses claimed for decline in business relate to operations outside the compensable area, or result from causes not directly

attributable to the invasion (such as fear of terrorism), such losses are not compensable.

(b) Shipping claimants

131. The Panel finds that losses of shipping claimants with a presence in the compensable area resulting from a decline in business are, in principle, compensable. However, with regard to shipping operations to Qatar and Bahrain, the Panel finds that the military operations, in light of their brevity, as found in paragraph 70, did not cause a measurable decline in business.

(c) Road claimants

132. With regard to road transportation claimants having a presence in the compensable area, the Panel determines that decline in business in relation to operations to, from and within the compensable area are, in principle, compensable.

2. Claimants without a presence in the compensable area

(a) Airline claimants

133. Airline claimants who did not maintain a presence in the compensable area but who conducted scheduled operations to the compensable area may be able to meet the evidentiary standard set out in paragraph 105 above. To the extent that a claimant can meet these criteria in respect of operations to and from the compensable area, the Panel finds that losses arising from a decline in business in respect of such operations are compensable.

(b) Shipping claimants

134. With regard to shipping, the Panel distinguishes between liner and charter services. Where a claimant does not have a presence in the compensable area but is engaged in the liner trade (scheduled services), the evidentiary standard described in paragraph 105 shall be applied to its claim for decline in business.

135. In contrast, where a shipping claimant provides charter (non-scheduled) services, the Panel notes that each charter will be negotiated individually at the prevailing market rate and that there is no commitment on the part of the shipowner nor on the charterer to renew such charters in the future. Accordingly, the Panel, having regard to the exclusion in

paragraph 11 of decision 9 of compensation for a mere expectation, determines that such a claimant must make a specific showing that it was engaged in a business practice or course of dealing of a nature as described in paragraph 105 to be eligible for compensation.

136. A claimant may be able to satisfy the criteria under paragraph 11 and show that it had a well-founded expectation of future business if, for example, it was engaged in a lengthy time-charter or in a contract of affreightment covering several voyages to the compensable area. However, the Panel finds that, even if the claimant can point to such a time-charter or contract of affreightment, it will still have to meet the evidentiary standard described in paragraph 105 above.

137. Where a claimant does not have a presence in the compensable area, nor conducts operations in that area, but rather relies on the business activities of others there, the Panel finds that the losses alleged in such claims are not a direct result of the invasion and occupation of Kuwait. Such is the case, for example, of an Egyptian shipping company which relied upon the supply of goods from companies within the compensable area for its business operations within Egypt. A further example is that of a shipping agent in Europe whose business with a ship-owner based in the compensable area suffered a decline. 64/

(c) Road claimants

138. Many road transportation claimants engaged in operations simila. to those of shipowners under charter-parties, in that their operations were not usually scheduled but were based on individual transactions. Accordingly, the Panel finds that, in order to establish the compensability of losses resulting from a decline in business, such claimants are required to meet the evidentiary standard described in paragraph 105 above.

C. Increased costs of operations

139. As discussed in section III above, claims for increased costs of operations relate mainly to additional war risk insurance premiums, increased fuel expenses, re-routing and additional staff costs. The Panel has already found that additional war risk insurance and additional staff costs may be directly caused by the invasion and occupation of Kuwait. It now applies those findings to the particular claims presented.

140. Based on the findings regarding the compensable area and period, claims for costs of additional war risk insurance premiums and additional

staff costs incurred in respect of transport operations to Iraq, Kuwait, Israel, Qatar and Bahrain during the periods specified in section III above are compensable. Similarly, additional premiums and staff costs paid in respect of operations to, from or through the Persian Gulf north of the 27th parallel and locations in Saudi Arabia within the range of Iraq's scud missiles, and air transport operations to and from Jordan, during the relevant periods, are compensable. Claims for additional premiums and staff costs incurred in respect of operations outside the compensable area or period are not compensable. 65/ Likewise not compensable are costs, increased or even ordinary, incurred in connection with operations of the Allied Coalition forces which themselves are not eligible for compensation pursuant to Governing Council decision 19. 66/

141. As regards eligible insurance costs, however, the Panel further finds that, to the extent that such additional costs were imposed specifically for risks other than those directly posed by the invasion and occupation of Kuwait, for example, in respect of acts of terrorism, these costs are not compensable because they do not result directly from the invasion and occupation of Kuwait. This will be taken into account in the valuation of the eligible claims.

142. In respect of mitigation, the Panel finds that, given the competitive environment of the transportation industries and the magnitude of their fixed costs of operations, market forces would normally be sufficient to have led the claimants to undertake the appropriate level of mitigation. Indeed, the continuation of activities, albeit at a loss, may be regarded as a step taken in mitigation. For similar reasons, the Panel finds that it was not unreasonable for claimants to undertake non-scheduled operations after 2 August 1990 to the compensable area.

143. Two airlines, based in Israel and Jordan respectively, assert that they had to relocate their fleets outside of the Middle East during the hostilities because of the risks of damage to their aircraft and the high price of additional war risk insurance premiums. This relocation is stated to have increased the costs of their operations. Given the amount of premiums required for war risk insurance at the original locations, the Panel finds that such additional relocation expenses qualify as mitigation costs. Consequently, they are compensable to the extent that they are reasonable and were incurred during the compensable period.

144. Claims have been submitted in respect of support services provided to employees detained by Iraqi authorities, and their families, as well as counselling and other medical treatment provided to such employees after

their release and repatriation. Such services include establishing and maintaining crisis centres, communication with families of detained staff members, and provision of holidays and other benefits to such staff upon their release. In addition, several claims seek compensation in respect of payments for mental suffering experienced by employees detained by Iraqi soldiers in Kuwait and Iraq and, in one case, allegedly resulting from the conduct of inspections by Allied Coalition Forces to ensure compliance with the trade embargo.

145. In keeping with the findings of other Panels, this Panel finds that a claim for costs incurred in facilitating communication between detainees and members of their family is compensable to the extent that such costs were reasonable in the circumstances. 67/ Expenses such as relating to the establishment and operation of crisis centres or psychologists' fees for those persons, are similarly compensable. 68/ If, however, the event giving rise to the expenses was solely related to the trade embargo or measures in implementation thereof, such as the inspection of ships's cargo, such expenses are not compensable.

146. With regard to the provision of support to family members of detainees, the Panel adopts the findings respectively made by the "E1" and "F1" Panels that such costs are compensable to the extent that they would not have been incurred in any event, were prompted by humanitarian considerations and were reasonable in amount. 69/ The Panel finds that discretionary expenses, such as payments for family holidays following the release of detainees, are not compensable.

147. One claimant seeks to recover the costs of providing gas masks to members of its staff located in Saudi Arabia. The Panel, recalling its determinations in section III above, finds that, if the staff were located in an area of Saudi Arabia subject to the threat of military action or actual military operations between 2 August 1990 and 2 March 1991, such costs are compensable.

148. One claimant seeks to recover sums paid in interest on a debt in Egypt between August 1990 and June 1991, stating that the interest would not have been payable if the invasion had not caused the postponement of a sale of an aircraft to a buyer unable to take delivery, thereby depriving the claimant of needed foreign currency. Another claimant, based in Israel, claims a sum paid as a "risk fee" that was added to interest payable on a loan between January 1991 and March 1991. The Panel has previously determined that losses resulting from the general economic consequences to a claimant of Iraq's invasion and occupation of Kuwait,

rather than the acts of the invasion and occupation themselves, are not direct losses. 70/ The Panel finds that the losses in question are in the nature of such general economic consequences. Accordingly, these losses are not compensable.

149. Claims are also made for promotional costs incurred after the cessation of hostilities by airline claimants who assert that such costs were necessary to rebuild business lost as a consequence of the invasion and occupation of Kuwait. Such costs have been claimed in respect of, for example, attendance at trade fairs, promotional trips for tour operators, journalists and travel agents, and advertising. The Panel finds that it has not been demonstrated that such promotional activities were a necessary consequence of the invasion and occupation of Kuwait, nor that they would not have been undertaken in the ordinary course of business. Such costs are, accordingly, not compensable.

D. Contract-related losses

1. Compensability in general

(a) Contracts with Iraqi parties

150. Several of the claims in this instalment allege contract-related losses involving Iraqi parties. Most such claims concern non-payment for services rendered under interline agreements or agency agreements. Other claims, particularly those submitted by road transportation claimants, rest on the inability of the claimants to perform transportation contracts because of the conditions in Iraq and Kuwait.

151. The Panel has previously considered the compensbility of claims based on contracts with Iraq, which are alleged to have been breached or rendered impossible to perform. Debts and obligations of Iraq arising prior to 2 August 1990 are outside the jurisdiction of the Commission, pursuant to Security Council resolution 687 (1990). 71/ As regards claims within the jurisdiction of the Commission, the Panel regards such claims to be compensable as provided for in paragraphs 8 and 9 of decision 9 and as interpreted previously. 72/

152. One claim in this instalment concerns the non-payment of sums due from a private sales agent in Iraq. As explained in paragraph 108, claims for contract-related losses with private Iraqi parties shall be assessed in accordance with the Panel's findings concerning the compensability of contract-related losses with Iraqi public entities.

/...

(b) Contracts with non-Iraqi parties

153. Claims are also submitted in relation to contracts with non-Iraqi parties in Kuwait, Jordan, Israel, Egypt and other locations. They include agency agreements and contracts for the provision of transport-related services, such as catering, maintenance and training contracts.

154. The Panel refers to its conclusion in its second report that, unlike the situation of contracts with Iraq, such losses are compensable only if the claimant has provided specific proof that the other party's failure to perform was the direct result of Iraq's invasion and occupation of Kuwait and not its independent decision. 73/

155. The Panel also recalls its determination in its first and second reports regarding claims for contractual debts that are alleged to have not been paid because of the invasion and occupation of Kuwait. Adequate proof that a contracting party's inability to perform resulted from the invasion and occupation of Kuwait consists of a showing that performance was no longer possible, for example, because the contracting party, in the case of an individual, was killed or physically impaired, or in the case of a business, ceased to exist or was rendered bankrupt or insolvent, as a result of Iraq's invasion and occupation of Kuwait. 74/

2. Compensability of specific types of contract-related losses

(a) Advance rental payments

156. Some claims are submitted in respect of advance rental payments made for premises in Iraq and Kuwait. They seek compensation because of the inability to use the premises during the hostilities. Others also claim for inability to use premises, particularly in Iraq, after the cease-fire on 2 March 1991.

157. In its first report, the Panel determined that losses arising from advance rental payments were compensable if the claimant's "inability to receive the benefit of the amounts paid in rent during the relevant period was the direct result of Iraq's invasion and occupation" of Kuwait. 75/

158. Having considered the range of views held by various panels, including this one regarding the compensability of advance rental payments, the Panel agrees with the proposition that advance rental payments in the case of businesses are best considered within a loss of profits claim. This is most clear where the rental property is dedicated, for example, to

a particular construction project. In such circumstances, where the claimant has also submitted a claim for loss of profits, the Panel has evaluated the claim for advance rental payments as part of the claim for loss of profits, as described in paragraphs 187 et seq below. However, in some instances, it is not feasible because of the manner in which the claim is presented (for example, the claimant has not also submitted a claim for loss of profits) or appropriate given the broad scope of the claimant's business (for example, a global airline), to value a claim for advance rental payments as an element of a loss of profits claim. In such instances, it is the view of the Panel that the advance payment of rent created an entitlement to the use of an asset and that the denial of that use is compensable. The measure of compensation in such cases is not in terms of the asset's contribution to the overall profitability of the business, but rather in terms of the value that could be expected if it, for example, were leased. When the property is amenable to alternate use, the best measure of value, absent any contrary indication in the record, is the rent paid by the claimant itself. Property intimately tied to a particular business may not be amenable to such alternate use. In such a case, the rent would constitute what other Panels have termed a "sunk cost". 76/

159. As regards claims for rental payments for premises in Iraq or Kuwait for the period after 2 March 1991, the Panel finds that the inability of the claimant to benefit from those payments did not result directly from the invasion and occupation of Kuwait.

(b) Expenses relating to staff

160. Many claims are submitted in respect of salaries paid to staff based in Iraq, Kuwait, and other locations for periods during which the staff could not work either because of disruption of business activities or, in some instances, detention of individual employees by Iraq ("unproductive salaries"). Claims have also been submitted for severance payments made to staff, particularly to staff of offices located in Kuwait and Iraq, which could not continue operations.

161. The Panel, pursuant to the determinations contained in its first report, concludes that unproductive salary payments are compensable to the extent that they were made in respect of staff based in the compensable area during the compensable period, and that the non-productivity was a direct result of the invasion and occupation of Kuwait. 77/ As for salary payments to such staff after evacuation, the Panel finds that these costs are only compensable where the record shows that the employee could not be

reassigned to other productive tasks. In those cases where the claimant terminated employment rather than continue unproductive salary payments, the contractually or legally required payments for early termination are compensable. 78/

162. Similarly, claims for payments made for personal property lost by employees or their families because of their enforced departure from Kuwait or Iraq, where such payments were made pursuant to legal obligations or otherwise appear justified and reasonable under the circumstances, are in principle compensable. 79/

E. Evacuation costs

163. The Panel has considered the scope of compensable evacuation costs under section III above, and now applies the determinations made therein to the claims before it.

164. The Panel finds that costs of evacuation from Iraq and Kuwait incurred by claimants engaged in the airline and shipping industries in respect of non-employees are compensable on the same basis as for employees. Accordingly, such evacuation costs are compensable to the extent proven by the claimant if incurred during the period 2 August 1990 to 2 March 1991.

165. With regard to evacuations from locations outside Iraq and Kuwait, the Panel concludes that such costs are compensable where the evacuations were effected from the compensable area. Costs for evacuation from Jordan, Iran, Turkey and Syria, as claimed in this instalment, are not compensable insofar as they do not constitute part of an on-going journey of evacuation from a location in the compensable area. 80/

F. Tangible property losses in Iraq or Kuwait

166. Claimants seek to recover for the value of tangible property lost from premises in Iraq and Kuwait. In particular, claims are submitted in respect of shipping containers located in ports in Kuwait and Iraq at the time of the invasion which were lost or damaged. Other claims relate to items such as furniture, vehicles and office equipment.

167. Consistent with its determinations in its first report, 81/ the Panel finds that the loss of tangible property from premises in Iraq and Kuwait are "direct losses" if the claimant has demonstrated that the assets were in those locations as of 2 August 1990, and that such assets were lost or

destroyed during the invasion and occupation of Kuwait ending on 2 March 1991.

G. Repairs and renovations to premises in Kuwait

168. Claims relating to real property in the present instalment are for the cost of repairs to damaged premises located in Kuwait. The Panel has previously determined that such costs are compensable because "even though such costs were incurred following the liberation of Kuwait, they were a widespread consequence of the destruction inflicted on the landscape of Kuwait in the course and immediate aftermath of Iraq's invasion and occupation." 82/

H. Bank balances

169. With respect to claims for funds held in bank accounts in Iraq, the Panel recalls its determination in its first report that such claims are compensable if the claimant had the right to transfer them outside Iraq. If, by the terms of the account, the funds were not exchangeable for foreign currency, as one claimant acknowledges, a claim for such funds is not compensable. 83/ In the case of foreign airlines, it appears from the evidence that the funds held were transferable albeit subject to prior authorisation from Iraqi authorities which, in some instances, was not easily forthcoming. The Panel also recognises that claimants would have applied some funds to meet local expenses, such as salaries of local employees and other office expenses in Iraq. Accordingly, the Panel finds that the balance of accounts held by the airlines is compensable but for a portion of the funds that would have been locally used and is still available to the claimants, as acknowledged by Iraq.

170. Regarding funds held in bank accounts in Kuwait, the Panel adopts the determinations of other panels that such funds are not compensable unless the claimant has complied with the requirements of the Central Bank of Kuwait, is still denied access to the funds and can show that the denial of access was directly caused by the invasion. 84/

I. Other losses

171. A claimant seeks to recover for a loss allegedly sustained in Jordan as a result of being compelled to sell an aircraft at a loss in order to meet its operating costs. Another claimant seeks to recover an alleged loss sustained in respect of funds which it maintained in Iraq, because of the depreciation of the Iraqi dinar.

172. The Panel finds that these losses were due to the chaotic economic situation following the invasion and occupation of Kuwait. Accordingly, the Panel finds that these losses are not a direct result of the invasion and occupation of Kuwait and are not compensable.

173. A claim is submitted for loss of prestige and goodwill that, the claimant alleges, resulted from the disruption of its transport operations by the invasion and occupation of Kuwait. The Panel finds that the claimant has failed to substantiate the alleged losses and, accordingly, the Panel need not consider the compensability in principle of this loss.

V. VERIFICATION AND VALUATION OF THE COMPENSABLE CLAIMS

174. Having determined which claims are compensable, the Panel now addresses considerations relevant to the ascertainment of the appropriate compensation, if any, to be awarded for each eligible claim. These considerations involve the procedures used to verify the claims and the methodology used to value the amount of compensation to be awarded.

A. Verification procedures

175. Article 35, paragraph 3 of the Rules states that claims by corporations and other legal entities "must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss". It is the responsibility of the Panel under article 35, paragraph 1, to determine "the admissibility, relevance, materiality and weight of any documents and other evidence submitted".

176. The Panel used a number of means to verify the losses claimed and to determine the appropriate amount of compensation. Given the complexity of the valuation issues, the large number of claims under review and the volume of supporting documentation underlying the claims, at an early stage of the proceedings the Panel sought expert advice pursuant to article 36 of the Rules. This advice was provided by accountants within the secretariat and accounting consultants.

177. Under the Panel's supervision and guidance, the accountants reviewed the documents and other information submitted by the claimants in response to the article 34 notifications described in section II above. To the extent applicable, generally accepted accountancy procedures were used in verifying and valuing the losses.

178. The Panel provided specific instructions to the accounting consultants with respect to the area and time period for which a loss sustained by the claimants would, in principle, be compensable. In order to ensure consistency in the treatment of the many claimants, the Panel also instructed that adjustment factors be used in evaluating the weight and sufficiency of the evidence presented in support of the value of the claims.

179. The Panel carefully reviewed the calculations and recommendations of the accountants with regard to each claim, adopting or revising them, as appropriate, in order to reach a decision in each case.

B. Valuation method

1. General considerations

(a) Standard review programmes

180. In order to evaluate all claims in a consistent manner, the types of losses in every claim were identified during the article 34 review process outlined in section II. Standard review programmes were developed with respect to each of the loss types identified, and were then applied in evaluating the claims. The standard review programmes delineated the successive steps that the accountants were to take in evaluating and valuing the claims. The programmes included a series of questions structured for each loss type. The responses to the questions, as derived from the claim files, guided the accountants in the verification and valuation of the claims. That procedure permitted the Panel to assess whether the accountants had properly applied its findings and gauged the weight and sufficiency of the evidence submitted by claimants (see paragraph 182).

(b) Avoidance of double compensation

181. Where a claim has been found to be compensable in this instalment and the same loss has been awarded in another claim, the amount of compensation awarded in the other claim has been deducted from the compensation calculated for the claim in this instalment. 85/ Where another claim for the same loss is pending before the Commission, the relevant information has been provided to the Panel reviewing the other claim so that the same loss is not compensated twice.

(c) Adjustment for evidentiary deficiencies

182. The type and quality of evidence submitted by the claimants varied significantly. Taking into account information obtained from the accountants as to the level and type of evidence which claimants in the industries in question usually are able to produce, the Panel established guidelines setting adjustment factors to be applied to the loss calculated by the method set out above. The guidelines were based upon, among other things, whether particular documentation, alone or together with other information, was considered sufficient evidence of the alleged value of a particular loss. These adjustment factors were applied to calculate the final recommended amount.

2. Specific types of claims

(a) Cancelled operations, decline in business and increased costs of operations

(i) Valuation of cancelled operations, decline in business and increased costs of operations on the basis of general accounts

183. A large number of claimants in this instalment seek compensation for losses said to arise as a result of increased costs of operations, a decline in business or cancelled operations. As stated in section IV, these three types of losses are compensable in principle. The following paragraphs describe the methods of valuation employed by the Panel where the claimant has used general accounts to support its claim.

184. In many instances, the invasion and occupation of Kuwait by Iraq only affected one stream of business activity of a multinational operation. However, financial data provided by the claimant frequently reflected its revenue and costs as a whole, thus encompassing more activity than that related to the claim. As importantly, such accounts also reflected costs that the Panel has determined to be not compensable (e.g. increased cost of fuel), as well as operating costs associated with operations outside the compensable area or period. This problem was particularly faced by the Panel when valuing the cancelled operations, decline in business and increased costs claims of air transport claimants.

185. Accordingly the Panel adopted a specific method of measuring the decline in revenue and increase in compensable costs of operations that the claimant experienced during the compensable period. That method is similar to a loss of profits analysis in that it projects revenue and costs, but departs from that approach in focusing not on lost profits as a whole but on the differences between (1) projected and actual revenue, and between (2) projected and actual costs. These two differences are then adjusted as appropriate to correct the distortions described in paragraphs 190 and 191. More specifically, the method involves the following steps.

186. Step one: Projection of revenue. A projection was made of revenue on the basis of historical data provided by the claimant. This was usually based on the audited accounts. The actual revenue reported for the compensable period was then deducted from the projected revenue to arrive at the decline in revenue for the compensable period.

187. Step two: Adjustment of decline in revenue. The Panel adjusted the amount calculated in step one so that it reflected that portion of the business attributable to operations in the compensable area. If instead of a decrease in revenue, an increase, as adjusted, was found to have occurred, no award of compensation was recommended for decline in revenue.

188. Step three: Projection of costs. A projection was made of the costs that would have been expected to be incurred during the compensable period on the basis of historical data provided by the claimant. This was usually based on the audited accounts. The projected cost was then deducted from the actual costs reported for the compensable period to arrive at the increased costs for the compensable period.

189. Step four: Adjustment of increase in costs of operation. The Panel adjusted the amount calculated in step three so that it related only to that portion of the business attributable to operations in the compensable area and to those increased costs that the Panel determined in section III(B) to be compensable. If a decrease in costs, as adjusted, was found to have occurred, then no award of compensation was recommended unless an amount was indicated in accordance with paragraph 197.

190. In determining the level of adjustments to be made, the Panel was mindful of the distinction in the operations of regional and global airlines, as an airline based in the Middle East had a greater exposure to the effects of the invasion and occupation of Kuwait than an airline that was based outside the Middle East.

191. The Panel also recognised that the adjustments made to the revenue and cost elements would not necessarily be the same, as there are instances where a claimant may, by the nature of the costs, have to incur costs to purchase a benefit far greater than that which the claimant will use or, which is compensable. An example would be the purchase of additional war risk insurance which provides cover for non-compensable loss categories or for a geographical region (e.g., the Middle East) larger than the compensable area. In such instances, the Panel apportioned the claimant's costs, both to exclude cover for non-compensable losses (such as terrorism risks) and for areas or time periods, or both, that were broader than those found to be compensable by the Panel.

(ii) Valuation of increased costs of operations on the basis of specific invoices

192. Where a claim for increased costs of operations was supported by specific invoices, a review of the claim was initially conducted to disallow costs which fall into categories such as fuel costs, determined by the Panel to be non-compensable. Of the costs, which are compensable in principle, any cost which would have been incurred in the normal course of business, such as regular insurance cover, was also deducted.

193. The remaining costs were then adjusted to remove costs which were incurred for time periods falling outside the compensable period. The same was done for costs which related to geographical areas outside the compensable area. Where the claimant provided the necessary information or the nature of the evidence was sufficiently detailed, costs were specifically identified as being within or outside the compensable period or area. Wherever the information provided by the claimant was not adequate for such identification but still demonstrated that the claimant entered the compensable area during the compensable period, the Panel directed that the costs be apportioned between compensable and non-compensable periods or areas.

194. To this end, in determining what amounts were incurred for the compensable period, time apportionment was used. In determining the amounts that were incurred for the compensable area, a geographical basis was used. The Panel then applied a ratio of the two numbers to apportion the insurance premiums to arrive at the compensable loss.

195. Having determined what remaining costs were compensable, the Panel considered the possibility of mitigation, applying the criteria spelled out above.

(iii) Increased cost of operations: reconciliation of valuation under general accounts and specific invoices

196. The Panel has been cognisant of the fact that the presentation of a given claim might entail a risk of double compensation. This is particularly true in relation to claims for lost profits and for increased costs of operations. In some instances, claimants sought only to recover increased costs. In other instances, the claim contains both a claim for lost profits and one for increased costs of operations, with varying degrees of overlap between the two.

197. The Panel has valued the increased cost of operations claims in accordance with the methods described above. Where the Panel has valued a claim for increased costs on the basis of both general accounts and specific invoices, the Panel has recommended for award, the higher of the two.

(b) Contract and contract-related losses

198. For claims where the continuation of a contract had allegedly become impossible, the existence of the contractual relationship was first ascertained. The Panel then verified that the contract could not be performed by the claimant or, where the claimant had performed, that it had not received payment as required under the contract. The Panel thereafter determined whether the inability to perform the contract, or the non-payment, was a direct result of Iraq's invasion and occupation of Kuwait.

199. The eligible claims were valued by determining what a claimant could have expected to earn under the terms of the contract had its continuation not been rendered impossible, deducting the cost savings brought about by the interruption. The claim was also adjusted for any mitigation that the claimant could reasonably have been expected to undertake. Where applicable, the expected revenue under the contract was apportioned over the period during which it would have been earned under the contract: only amounts that fell due within the compensable period have been recommended for award.

(c) Evacuation costs

200. Claims for costs of evacuation were valued in the same manner as claims for increased costs of operations in that the claims were reviewed to exclude costs that were incurred in relation to non-compensable areas or periods.

201. In some cases before the Panel, the claimants valued part of their evacuation-related losses on the basis of their published passenger and cargo tariffs for normal operations. In such cases, the Panel assessed the claims on the basis of those published tariffs adjusted, as necessary, to reflect, *inter alia*, the non-commercial nature of such operations, the difference between published fares and actual fares resulting from the normal discounting of published fares, and also to account for the occupancy rate of a particular transport craft or vehicle.

(d) Payment or relief to others

202. The evidence was reviewed to ensure that all compensable costs were supported by proof of payment. The type of evidence expected of claimants was determined by the nature of the payment involved: for instance, air fares could be evidenced by invoices from travel agents; payments for lost property or other items by invoices, ledgers or other business records. 86/

(e) Loss of tangible property

(i) Generally

203. In the case of tangible property losses, the Panel ascertained the existence of the property and the claimant's title to the property at the time of the loss. The Panel also reviewed the evidence submitted to establish the fact of the loss. The Panel then distinguished whether the claim was for costs incurred to repair or replace the asset, loss in the value of the asset, estimated repair costs or net book value.

204. For claims based on repair or replacement costs incurred, proof of payment was ascertained and the claims adjusted for any unsupported payments. The Panel then verified whether the claims reflected appropriate depreciation, normal maintenance or betterment. 87/ When the claimant had failed to do so, the Panel made the necessary adjustments.

205. For claims based on net book value, the Panel reviewed the documents provided to establish the cost and date of acquisition of the asset. The depreciation applied by the claimant was reviewed for reasonableness and the claim adjusted if necessary.

(ii) Cash

206. Cash loss claims were subjected to a high level of scrutiny as there is a greater potential for overstatement than in other categories of property claims. This is consistent with the practice of other panels. 88/

207. The Panel reviewed the statement of claim and supporting documents to verify whether all the circumstances of the loss appeared credible and whether any part of the cash loss could have been recovered or mitigated. The Panel sought credible and contemporaneous records of the level of cash maintained by the claimant from documents such as cash books and bank statements.

VI. INCIDENTAL ISSUES

A. Date of loss

208. In this section, the Panel determines "the date the loss occurred" within the meaning of decision 16 of the Governing Council, for the purpose of recommending compensation for interest and for the purpose of determining the appropriate exchange rate to be applied to losses stated in currencies other than in United States dollars.

209. The date when the loss occurred depends on the character of the loss. The claims for cancelled operations or decline in business leading to a loss of profits in this instalment concern losses that were suffered over an extended period of time. Consistent with the findings in its first and second reports, and also with the findings of other panels, the Panel selects the mid-point of the compensable period during which the loss occurred as the date of loss. All recommended awards are net of any individual interest claims advanced by the claimants.

210. For increased costs of operations, the Panel also selects the mid-point of the compensable period during which the costs were incurred as the date of loss. This is in conformity with the principle that increased costs of operations lead to a loss of profits, and should, therefore, be treated in the same way as the above.

211. For contract or contract-related claims, the Panel notes that the date of loss for each contract will depend on the facts and circumstances surrounding the non-performance of the contract. Given the vast number of contract-related claims that have been filed, and the fact that each of these claims could involve losses relating to more than one contract, a contract-by-contract determination of the date of loss would be unadministrable. The Panel is, therefore, of the opinion that the "twin objectives of speed and accuracy" referred to in paragraph 40 of its first report can only be met by the adoption of a common date of loss. The Panel deems, therefore, that contracts involving Iraq and Kuwait were frustrated as at 2 August 1990 and, accordingly, selects that date as the date of loss for all contract or contract related claims now under consideration.

212. For evacuation costs and payment of relief to others, the Panel notes that in general these costs were incurred over the period of the invasion and occupation of Kuwait and, therefore, adopts the mid-point of the occupation period as the date of loss for costs of this nature.

213. With respect to loss of tangible assets, the Panel selects 2 August 1990 as the date of the loss, as that coincides with the claimant's date of loss of control over the assets in question. This accords with earlier decisions of this and other Panels.

B. Currency exchange rates

214. The Panel notes that many of the claimants have advanced claims in currencies other than United States dollars. The Panel has assessed all such claims, and performed all claim calculations, in the original currencies of the claims. Since the Commission issues its awards in United States dollars, the Panel must, therefore, determine the exchange rate to be applied to claims where the losses are measured in other currencies.

215. Noting that all prior Commission compensation awards have relied upon the United Nations Monthly Bulletin of Statistics for determining commercial exchange rates into United States dollars, the Panel adopts that approach for this report.

216. The claims for cancelled operations or decline in business leading to a loss of profits concern losses that were suffered over an extended period of time. The claims for increased costs also extend over a period of time. The Panel decided that, for such claims, the appropriate rate will be the average of the rates reported in the United Nations Monthly Bulletin of Statistics for the months for which the claimant is compensated.

217. For contract-based losses, in keeping with decisions of previous panels, this Panel accepts that the contract rate is the applicable rate as this was specifically bargained for and agreed to by the parties. If there is no contractual rate, the Panel adopts the rate disclosed in the United Nations Monthly Bulletin of Statistics for the month of the date of loss.

218. For evacuation costs, the Panel adopts the decision of the "F1" Panel that the rate reported in the United Nations Monthly Bulletin of Statistics for the month of November 1990 is the most appropriate date for determining the applicable exchange rate for currencies other than the Kuwaiti dinar. 89/

219. With respect to claims for the loss of tangible assets, the Panel selects the rate as disclosed in the United Nations Monthly Bulletin of Statistics for the month of August 1990 as the appropriate rate.

220. The above rules apply to all claims denominated in currencies other than the Kuwaiti dinar. For awards measured in Kuwaiti dinars, the Panel takes note of the extreme fluctuation in the value of the Kuwaiti dinar during the period of the occupation, and adopts the decision of the "F1" and "E4" Panels to apply the rate ruling at 1 August 1990 as the most appropriate rate. This Panel also adopts the "E4" Panel's decision to use the rate disclosed in the United Nations Monthly Bulletin of Statistics for the month of July as the most appropriate measure for the rate ruling as at 1 August 1990.

C. Interest

221. Governing Council decision 16 states that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". In decision 16, the Governing Council further specified that it would consider the method of calculation and of payment of interest at a later date and that "[i]nterest will be paid after the principal amount of awards". Accordingly, all claim figures in this report are net of any individual interest claims advanced by the claimants.

222. The task of the Panel, therefore, is to determine the date from which interest is to run for the claims in this instalment. With respect to the date from which interest will accrue for all compensable claims, in accordance with decision 16 of the Governing Council, the Panel selects the date when the loss occurred, as defined above.

D. Claims preparation costs

223. In a letter dated 6 May 1998, the Executive Secretary of the Commission advised the Panel that the Governing Council intends to resolve the issue of claims preparation costs at a future date. Accordingly, the Panel takes no action with respect to claims for such costs.

VII. RECOMMENDATIONS

224. Based on the foregoing, the Panel recommends that the amounts set out in annex I below be paid in compensation for direct losses suffered by the claimants as a result of Iraq's unlawful invasion and occupation of Kuwait.

Geneva, 17 September 1999

(*Signed*) Mr. Bernard Audit
Chairman

(*Signed*) Mr. José-María Abascal
Commissioner

(*Signed*) Mr. David D. Caron
Commissioner

Notes

1/ S/AC.26/1992/10.

2/ E2(1) report, paras. 38-48.

3/ See, for example, IATA Composite Resolution 003w, adopted at the Composite Passenger Tariff Coordinating Conference, and Composite Resolution 025aa adopted by the Composite Cargo Tariff Coordinating Committee at their meetings of 29-31 August 1990, permitting the imposition of surcharges by members, subject to approval of their governmental authorities (if required), to offset effects of the increase in fuel prices.

4/ The IATA interline scheme provides the framework for the conclusion of bilateral agreements between airlines incorporating a clearing house procedure for payments between subscribing airlines.

5/ The agreements, adopted after the invasion and occupation of Kuwait, designated "special dangerous areas" and, for varying periods, related to voyages to the Gulf of Aqaba, the ports of Saudi Arabia on the Red Sea, and the ports of Syria, Lebanon and Israel, as well as through the Persian Gulf. The agreements provided, *inter alia*, that seamen had to be warned if voyages were destined for a designated area and could not be compelled to enter such areas; and, if seamen consented to enter such areas, required the payment of extra allowances, the rates of which depended upon the particular waters or ports to be entered and whether the voyage was undertaken by a tanker or cargo vessel. See, for example, "Ratification of the Special Collective Agreement for voyages through the Arab Gulf, the Gulf of Aqaba and the ports of Saudi Arabia on the Red Sea", Entry No. 3, Decision No. 2325.11/1890, 11 September 1990, Ministerial Decisions and Approvals, *Government Gazette of the Hellenic Republic*, Issue B, No. 591.

6/ Paragraph 21 of decision 7 provides in relevant part that compensation is available:

> "[W]ith respect to any direct loss, damage, or injury to corporations and other entities as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:
>
> (a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;
>
> (b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;
>
> (c) Actions by officials, employees or agents of the Government of

Iraq or its controlled entities during that period in connection with the invasion or occupation;

(d) The breakdown of civil order in Kuwait or Iraq during that period; or

(e) Hostage-taking or other illegal detention."

7/ This is confirmed in decision 15 of the Governing Council which states that "[t]here will be other situations where evidence can be produced showing claims are for direct loss, damage or injury as a result of Iraq's unlawful invasion and occupation of Kuwait".

8/ E2(2) report, para. 64.

9/ Ibid.

10/ E2(2) report, para. 67. E2(1) report, paras. 158-161.

11/ For present purposes, the "territory" of a state includes the land areas, the waters adjacent thereto, and the airspace above such land and waters. The term "waters" is also used to refer to maritime areas used for international navigation, such as the Persian Gulf.

12/ E2(2) report, para. 65.

13/ E2(1) report, para. 162.

14/ E2(2) report, para. 64.

15/ E2(2) report, para. 66.

16/ E2(2) report, para. 102

17/ See paragraph 64 above, recalling the Panel's determinations in its second report.

18/ The "F1" Panel has determined that Qatar and Bahrain "were not the subject of any specific threat of military action". F1(3) report, para. 140.

19/ In the morning of 22 February 1991, a scud missile moving towards Bahrain was intercepted and landed in the Persian Gulf off the coast of Bahrain. In the night of 25 February 1991, an Iraqi scud missile landed in the territory of Qatar. On the same night, another scud missile was reported to have been destroyed in Bahrain's airspace. Joint Arab Forces Command news briefing, 22 February 1991 and 26 February 1991. Also reported by, inter alia, the Associated Press (26 February 1991), BBC Summary of World Broadcasts (28 February 1991) and Facts of File World News Digest (28 February 1991), Jane's Defence Weekly (2 March 1991), Jane's Intelligence Review (1 May 1991).

/...

20/ E2(2) report, para. 64.

21/ See, for example, Bruce W. Watson ed., *Military Lessons of the Gulf War* (1991), p. 127.

22/ E2(2) report, para. 64.

23/ E2(2) report, para. 68.

24/ For the definitions of "territory" and "waters" as used in the present instalment, see note 11 *supra*.

25/ The airline industry can deploy its aircraft onto other routes or for other purposes. The shipping industry is similarly flexible, notably in that a ship that has discharged its cargo can be re-hired through the major shipping exchanges. Likewise, road carriers can deploy their vehicles on other routes.

26/ F1(2) report, para. 101.

27/ E3(1) report, paras. 177-178.

28/ E2(1) report, paras. 133 and 153; C(7) report, paras. 271-272.

29/ See discussion of steps taken to avoid double compensation at paragraph 181 below.

30/ E2(2) report, para. 60. See also F1(1.1) report, paras. 94-96.

31/ F1(1.1) report, para. 94 (agreeing with the holding of the Panel in the C(1) report, p. 13).

32/ The "F1" Panel concluded that costs incurred in transporting evacuees within their countries of nationality "are compensable, provided there was not a significant interruption in the evacuation journey so as to prevent it from being considered an ongoing journey". F1(2) report, para. 103.

33/ The provisions of paragraphs 21(d) and (e) are set out in note 6 above.

34/ E2(2) report, para. 75.

35/ An award of the "F1" Panel included additional premiums paid for war risk insurance. Such costs were incurred in respect of special flights performed under charter by Cyprus Airways to evacuate Cypriot nationals from Iraq and Kuwait and the terms of the charter specifically required the Government to pay "all costs and expenses involved or arising out of" such flights. For these reasons, the F1 Panel concluded that such costs were "an unavoidable expense relating to the three special evacuation flights". F1(2) report, para. 107.

36/ 7 UNRIAA 44 (1 November 1923).

37/ 7 UNRIAA 71 (11 March 1924).

38/ Administrative Decision I, 7 UNRIAA 21 (1 November 1923).

39/ The impact of intervening acts is considered substantively at paragraphs 70-72 of the E2(2) report.

40/ The Panel notes that the normal premiums payable for war risk insurance are not a direct consequence of the invasion as claimants would have paid such premiums in any event.

41/ See, for example, R. Salman, "The significance of 1990 in the oil industry", OPEC Review, vol. XV, No. 4, Winter 1991.

42/ The Governing Council stated: " 'The economic situation caused thereby' is a broader concept. The trade embargo and related measures had wider economic effects, both on international trade and on economic activity within Kuwait and Iraq. For example, the world price of oil was temporarily higher than it otherwise would have been and, in addition, countries which previously imported oil from Iraq and Kuwait had to find other sources of supply, with effects on transport and transit services and on refinery operating costs". Decision 15, paragraph 9(I)(ii).

43/ The few shipping claims for re-routing costs in this instalment failed on other grounds. Accordingly, the Panel makes no finding in that respect.

44/ See International Civil Aviation Organization, "Gulf contingency activities and developments in the Middle East region resulting from the invasion of Kuwait on 2 August 1990" ("the ICAO report"). See also The Kuwait Crisis: Basic Documents, eds. E. Lauterpacht, C.J. Greenwood, M. Weller and D. Bethlehem, (Grotius, 1991) at p. 321. On 8 August 1990, a Gulf Contingency Co-ordinating Team was established by ICAO because of the Middle East region's central role in the movement of international aviation traffic between Europe and Asia. The co-ordinating team identified five alternative "contingency routes" to accommodate traffic between Europe and Asia; ICAO report at p. 2.

45/ The nature and content of such agreements are described in note 5 above.

46/ E2(2) report, para. 78.

47/ Paragraph 9 of Governing Council decision 9, on the other hand, deals with the compensability of losses arising from "contracts where Iraq is not a party".

49/ E2(1) report, para. 116.

50/ E2(1) report, para. 82.

51/ For further discussion of this issue, see paragraph 151 below.

52/ Decision 7, para. 24; Decision 9, para. 6; Decision 15, para. 9.

53/ Decision 9, para. 6; Decision 15, para. 9.

54/ E2(1) report, paras. 164-169. The trade embargo was established under Security Council resolution 661 (1990), adopted on 6 August 1990. The application of the trade embargo to all forms of transport was specifically addressed in Security Council resolution 670 (1990), adopted on 25 September 1990. The trade embargo against Kuwait was lifted on 3 April 1991. The trade embargo against Iraq is still in force.

55/ See E2(1) report, para. 173.

56/ Decision 9, para. 6; Decision 15, paragraph 9(IV).

57/ E2 (1) report, para. 124. Other Panels have also interpreted the scope of the duty to mitigate in the context of the particular losses before them. See, for example, F1(1.1) report, para. 79; E3(1) report, para. 96; The WBC claim, paras. 117-118.

58/ E2(1) report, para. 132.

59/ E3(2) report, para. 14(d).

60/ See E2(2) report, paras. 81, 104 and 140.

61/ E2(2) report, para. 102-103.

62/ E2(2) report, para. 78.

63/ The applicable evidentiary standard is described in paragraph 105 above.

64/ The Panel does not address the situation where the claimant is a party to an existing contract to be performed in whole or in part in the compensable area.

65/ The Panel notes that the additional premium areas declared by underwriters were very broad, encompassing for varying periods the Persian Gulf, the Red Sea, as well as Cyprus, southern Turkey, Egypt, Syria, North and South Yemen, and other destinations.

66/ See further discussion in E2(2) report, para. 107.

67/ F1(2) report, para. 119.

68/ F1(3) report, paras. 125-128; D(2.1) report, paras 59-62; B(2.1) report, paras. 31-32.

69/ E1(3) report, paras. 433-435; F1(1.1) report, para. 85.

70/ E2(1) report, para. 141.

71/ The Panel confirms the application to the present instalment of its findings in paragraph 90 of its first report with respect to the Commission's jurisdiction over such debts, namely:

> "In the case of contracts with Iraq, where the performance giving rise to the original debt had been rendered by a claimant more than three months prior to 2 August 1990, that is, prior to 2 May 1990, claims based on payments owed, in kind or in cash, for such performance are outside of the jurisdiction of the Commission as claims for debts or obligations arising prior to 2 August 1990."

72/ E2(1) report, paras. 115-118; E2(2) report, paras. 95-100.

73/ E2(2) report, para 89; E2(1) report, para. 145.

74/ E2(1) report, para. 145; E2(2) report, para. 89. See also, E4(1) report, para. 209.

75/ E2(1) report, para. 234. The Panel notes that claims for rent paid in respect of business premises have been dismissed by other Panels, on the ground, inter alia, that such expenses were normal operating expenses that the claimant would have incurred regardless of the invasion and occupation of Kuwait. See, for example, E3(2) report, paras. 66-67 and 121-123. See also F1(1.1) report, para. 74; F1(1.2) report, para. 53-56, F1(2) report, paras. 77-82.

76/ E3(1) report, para. 382, E3(2) report, paras. 44-47, 55-56, 66-68 and 121-123; E3(3) report, paras. 152-153.

77/ E2(1) report, paras. 213-15, 237-38.

78/ Similar conclusions have been reached by the "F1" Panel in respect of the claims included in part 1 of its first instalment and in its second instalment. See F1(1.1) report, para. 68 and F1(2) report, para. 84.

79/ Paragraph 22 of decision 7 provides that compensation is "available to reimburse payments made or relief provided by corporations or other entities - for example, to employees, or to others pursuant to contractual obligations - for losses covered by any of the criteria adopted by the Council."

80/ F1(1.1) report, paras. 94-96. See also E2(2) report, paras. 60-61.

81/ E2(1) report, paras. 112 and 123.

82/ E2(1) report, para. 235.

83/ E2(1) report, paras. 136-40.

/...

84/ Kuwait's Public Authority for Assessment of Compensation for Damages Resulting from Iraqi Aggression ("PAAC") informed the Commission that Kuwait had made "accounts freely available to all holders of bank accounts in Kuwait ... [thus] there will be no need for such persons to file a claim through the UN process". See F1(1.1) report, para. 82; D(2.1) report, para. 99.

85/ See Governing Council decision 13, para. 3.

86/ In respect of claims for compensation paid by claimants to employees for mental pain and anguish resulting from detention in Iraq or Kuwait lasting more than 3 days, the Panel has applied the ceilings established in Governing Council decision 8 which limits the compensation to be awarded in respect of such payments to US$10,000 per person.

87/ E2(1) report, paras. 271-271.

88/ See, for example, paragraph 127, E4(1) report.

89/ F1(1.1) report, para. 101.

Annex I: Recommended awards for the third instalment of "E2" claims

Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
	Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
Austrian Airlines Osterreichische Luftverkehrs AG	ATS	75,240,134	6,841,256	Tangible property	ATS	384,468	13,109	Calculated loss is less than loss alleged (see paras. 180-207). Insufficient evidence of value (see paras. 175 & 186).	2,203,137
				Loss of profits	ATS	46,136,000	2,150,061	Calculated loss is less than loss alleged (see paras. 180-207). Insufficient evidence of value (see para. 186).	
				Insurance	ATS	24,024,763	39,967	Part or all of loss sustained outside compensable period and/or area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	
				Unpaid receivables	ATS	1,945,769	0	Part or all of claim is unsubstantiated.	
				Other losses	ATS	2,749,134	0	Part or all of loss is not direct (see para. 53).	
NV Sabena SA	USD	1,490,501	1,490,501	Insurance	USD	1,490,501	101,956	Part or all of loss sustained outside compensable period and/or area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	101,956

Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
	Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
Natiss Belgium NV	DEM	2,485,035	1,590,931	Advance rental payment / Tangible property	DEM	562,865	212,738	Part or all of loss sustained outside compensable period (see para. 77). Insufficient evidence of value.	360,608
				Bank balance	DEM	21,428	0	Part or all of loss is not direct (see para. 53).	
				Bank balance	DEM	257,085	Pending	Consideration of this element of the claim has been deferred to a later instalment when similar issues will be considered.	
				Unpaid receivables	DEM	165,300	0	Part or all of loss is not direct (see para. 53).	
				Contract loss	DEM	1,419,194	132,622	Part or all of claim is unsubstantiated. Deduction for failure to mitigate (see para. 114).	
				Payments to staff	DEM	59,164	15,248	Deduction for failure to mitigate (see para. 114).	
MIT Transportes Maritimos Internacionais Limitada	USD	14,201,600	14,201,600	Payment or relief to others	USD	207,418	0	Part or all of loss is not direct (see para. 53).	0
				Payments to staff	USD	458,812	0	Part or all of claim is unsubstantiated.	
				Evacuation	USD	117,170	0		
				Other losses	USD	1,700,000	0	Part or all of loss is not direct (see para. 53).	
				Loss of profits	USD	3,908,000	0	Trade embargo is sole cause of loss (see para. 109-112).	
				Other losses	USD	5,810,010	0	Part or all of claim is unsubstantiated.	

	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
		Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
009	Royal Brunei Airlines SDN BHD	USD	546,365	546,365	Insurance	USD	546,365	0	Part or all of loss sustained outside compensable area (see para. 77).	0
023	International Road Transport Corporation "Somat" AG	USD	21,610,458	21,610,458	Advance rental payment	USD	58,170	0	Part or all of claim is unsubstantiated.	2,847,883
					Tangible property	USD	14,148,578	2,008,949	Calculated loss is less than loss alleged (see paras 180-207).	
					Payments to staff	USD	615,010	296,938	Part or all of claim is unsubstantiated.	
					Loss of profits	USD	6,960,000	0		
					Unpaid receivables	USD	1,818,000	541,996	Pre existing debt (see para. 151). Insufficient evidence of value.	
					Claim preparation costs	USD	10,500	Pending	To be resolved by Governing Council (see para. 223).	
846	Air China	USD	19,420,663	19,420,663	Contract loss	USD	167,293	7,456	Part or all of loss sustained outside compensable period (see para. 77).	14,227,107
					Payment to staff	USD	15,750	0	Part or all of claim is unsubstantiated. Part or all of loss is not direct (see para. 53). Part or all of loss sustained outside compensable period (see para. 77).	
					Loss of profits	USD	5,728,713	2,988,722	Calculated loss is less than loss alleged (see paras 180-207).	
					Insurance	USD	2,181,612	0		
					Tangible property	USD	5,906	5,906	N/A	
					Evacuation	USD	11,298,189	11,225,023	Part or all of claim is unsubstantiated.	
0139	I&D Oil Carriers Limited	USD	215,359	1,187,452	Contract loss	USD	215,359	0	Part or all of claim is unsubstantiated.	0
		GBP	611,261		Other losses	GBP	611,261	0		
0140	Rudi Navigation Limited	USD	735,135	735,135	Insurance	USD	735,135	661,621	Non compensable risks covered by war risk insurance (see para. 91).	661,621

NCC laim no.	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
		Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
00157	Holy Shipping Limited	USD	8,400	8,400	Unpaid receivables	USD	8,400	8,174	Calculated loss is less than loss alleged (see paras. 180-207).	8,174
00170	Waterdiamond Marine Limited	USD	3,312	3,312	Insurance	USD	3,312	0	Part or all of loss sustained outside compensable area (see para. 77).	0
00171	Euroventure Shipping Limited	USD	74,074	74,074	Insurance	USD	74,074	66,666	Non-compensable risks covered by war risk insurance (see para. 91).	66,666
00172	Silverose Marine Limited	USD	42,160	42,160	Insurance	USD	42,160	37,944	Non-compensable risks covered by war risk insurance (see para. 91).	37,944
00207	Cyprus Airways Limited	USD	19,895,377	19,895,377	Loss of profits	USD	15,228,978	1,676,000	Calculated loss is less than loss alleged (see paras 180-207).	1,676,000
					Insurance	USD	607,309	0		
					Fuel	USD	4,059,090	0	Losses relating to fuel costs are not direct (see paras 94-96).	
00213	Anole Marine Company Limited	USD	141,314	141,314	Insurance	USD	141,314	25,330	Part or all of loss sustained outside compensable period and/or area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	25,330
000215	Petrolina Limited	USD	3,464,940	3,464,940	Loss of profits	USD	3,464,940	0	Part or all of loss sustained outside compensable area (see para. 77).	0
000218	Yale Shipping Company Limited Limassol	USD	6,684	6,684	Insurance	USD	6,684	0	Part or all of loss sustained outside compensable area (see para. 77).	0
000219	Trade Mariner Navigation Limited	USD	342,830	342,830	Contract loss	USD	218,201	119,950	Calculated loss is less than loss alleged (see paras 180-207).	119,950

UNCC claim no.	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
		Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
					Loss of profits	USD	44,567	0	Part or all of claim is unsubstantiated Deduction for failure to mitigate (see para. 114).	
					Interest	USD	82,062	Pending	To be resolved by Governing Council (see paras. 221-222).	
4000220	Monopoly Marine Company Limited	USD	62,236	62,236	Payments to staff	USD	9,683	7,357	Part or all of loss sustained outside compensable period (see para. 77).	51,173
					Insurance	USD	52,553	43,816	Part or all of loss sustained outside compensable period (see para. 77) Non-compensable risks covered by war risk insurance (see para. 91).	
4000221	Kitsa Shipping Company Limited	USD	74,247	74,247	Payments to staff	USD	6,563	0	Part or all of loss sustained outside compensable area (see para. 77).	0
					Insurance	USD	67,684	0		
4000299	Czechoslavak Airlines Joint Stock Company	USD	874,599	874,599	Tangible property	USD	3,959	1,979	Insufficient evidence of value.	26,066
					Repairs and renovations	USD	3,023	1,511		
					Unpaid receivables	USD	22,576	22,576	N/A	
					Re-routing	USD	845,041	0	Losses relating to re-routing are not direct (see para. 99).	
4000050	A/S Dampskibsselska bet Svendborg and Dampskibsselska bet of 1912, A/S trading in partnership under the name of Maersk Line	USD	3,385,562	3,508,304	Tangible property (containers)	USD	3,341,000	3,025,573	Part or all of claim is unsubstantiated.	3,025,573
		GBP	35,136		Other losses	GBP	35,136	0		
		SGD	98,740			SGD	98,740	0		
					Loss of profits	USD	44,562	0		

UNCC claim no.	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
		Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
002615	Egyptair Organisation	USD	410,332,348	410,332,348	Bank balance	USD	110,166,427	Pending	Consideration of this element of the claim has been deferred to a later instalment when similar issues will be considered.	46,752,124
					Loss of profits	USD	238,080,053	46,604,921	Calculated loss is less than loss alleged (see paras. 180-207).	
					Insurance	USD	13,451,376	147,203	Insufficient evidence of value. Part or all of loss sustained outside compensable period (see para. 77). Non compensable risks covered by war risk insurance (see para. 91).	
					Fuel	USD	48,634,492	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
002878	East Delta Bus Company	EGP	3,500,000	1,750,000	Loss of profits	EGP	3,500,000	0	Part or all of claim is unsubstantiated.	0
002879	General Nile Company for Transport Works	EGP	3,829,683	1,914,842	Contract loss	EGP	3,829,683	0	Part or all of claim is unsubstantiated.	0
002880	The Nile General Company for River Transport	EGP	950,000	475,000	Loss of profits	EGP	950,000	0	Part or all loss sustained outside compensable area (see para. 77).	0
002881	The General Nile Company for Heavy Transport	USD	10,146,528	10,146,528	Contract loss	USD	10,146,528	0	Part or all of claim is unsubstantiated.	0
002882	Nile Company for Water Transport	USD	192,915	192,915	Loss of profits	USD	192,915	0	Part or all of loss sustained outside compensable area (see para. 77). Part or all of claim is unsubstantiated.	0

UNCC claim no.	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
		Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
4002883	Federal Arab Land Transport (The Arab Union for Road Transport)	USD	33,332	1,223,364	Loss of profits	USD	33,332	0	Part or all of claim is unsubstantiated.	0
		EGP	2,380,063			EGP	2,380,063	0		
4002884	The Nile General Company for Direct Transport	USD	1,119,991	1,119,991	Contract loss	USD	859,807	0	Part or all of claim is unsubstantiated.	0
					Unpaid receivables	USD	260,184	0		
4002911	Ismailia National Transport Company (S.A.E.)	USD	1,349,201	1,349,201	Tangible property	USD	150,458	150,458	N/A	795,303
					Tangible property (trucks)	USD	306,637	306,637	N/A	
					Payments to staff	USD	44,199	0	Part or all of claim is unsubstantiated.	
					Loss of profits	USD	441,989	273,908		
					Unpaid receivables	USD	64,300	64,300	N/A	
					Interest	USD	341,618	Pending	To be resolved by Governing Council (see paras. 221-222).	
4000789	Ethiopian Airlines	USD	26,914,344	26,914,344	Loss of profits	USD	2,124,200	0	Part or all of claim is unsubstantiated.	0
					Insurance	USD	1,879,199	0		
					Fuel	USD	22,910,945	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
4002395	Public Enterprise Yugoslav Airlines	USD	8,713,599	8,713,599	Payments to staff	USD	11,702	0	Part or all of claim is unsubstantiated.	1,409,141
					Loss of profits / Evacuation	USD	6,051,088	1,278,573	Calculated loss is less than loss alleged (see paras. 180-207).	
					Evacuation by bus	USD	41,861	32,044	Calculated loss is less than loss alleged (see paras. 180-207).	
					Insurance	USD	218,942	98,524	Non-compensable risks covered by war risk insurance (see para. 91).	
					Interest	USD	2,346,066	Pending	To be resolved by Governing Council (see paras. 221-222).	
					Claim preparation costs	USD	20,000	Pending	To be resolved by Governing Council (see para. 223).	

UNCC claim no.	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
		Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
4000792	Finnair Oy	USD	146,727	146,727	Insurance	USD	146,727	96,581	Part or all of loss sustained outside compensable area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	96,581
4001780	Compagnie Nationale Air France	FRF	329,650,857	62,886,466	Contract loss	FRF	45,000,000	0	Part or all of claim is unsubstantiated.	23,710,845
					Tangible property	FRF	480,000	45,784		
					Insurance	FRF	107,116,286	0		
					Bank balance	FRF	21,490,000	1,188,901	Non-compensable element of bank balance claim (see para. 169).	
					Payments to staff	FRF	5,964,551	741,900	Insufficient evidence of value. Part or all of claim is unsubstantiated.	
					Loss of profits	FRF	149,600,000	21,734,260	Calculated loss is less than loss alleged (see paras. 180-207).	
					Other losses	FRF	20	0		
4001832	Watson Brown SA	FRF	3,045,516	580,984	Unpaid receivables	FRF	3,045,516	0	Pre-existing debt (see para. 151).	0
4001874	Compagnie d'Affretement et de Transport	FRF	296,207	56,506	Unpaid receivables	FRF	296,207	0	Pre-existing debt (see para. 151).	0
4001973	SMTT (Societe Maritime de Transit et de Transports)	FRF	156,011	29,762	Unpaid receivables	FRF	156,011	0	Part or all of claim is unsubstantiated.	0
4000381	Interport Stoob GmbH	DEM	10,406	6,662	Unpaid receivables	DEM	10,406	6,662	N/A	6,662
4000561	Senator Linie GmbH & Co. KG	USD	819,670	819,670	Tangible property (containers)	USD	373,662	373,662	N/A	388,612
					Other losses	USD	247,993	14,950	Part or all of loss sustained outside compensable period and/or area (see para. 77).	
					Insurance	USD	198,015	0		
4000852	LTU Luftransport-Unternchmen GmbH & Co. KG	DEM	2,259,068	1,446,266	Re-routing	DEM	264,924	0	Losses relating to re-routing are not direct (see para. 99).	0

UNCC laim no.	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
		Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
					Insurance	DEM	1,653,307	0	Part or all of claim is unsubstantiated.	
					Fuel	DEM	340,837	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
00877	Lufthansa German Airlines	DEM	23,421,919	24,344,593	Tangible property	DEM	166,172	39,894	Insufficient evidence of value.	1,689,057
		USD	9,349,766		Payments to staff	DEM	1,003,043	329,514	Part or all of claim is unsubstantiated.	
					Loss of profits	DEM	18,984,400	1,114,323	Calculated loss is less than loss alleged (see paras. 180-207).	
					Insurance	USD	9,349,766	166,126	Calculated loss is less than loss alleged (see paras. 180-207).	
						DEM	3,268,303	39,200	Non-compensable risks covered by war risk insurance (see para. 91).	
00935	Hapag-Lloyd Flug Limited	DEM	38,879,000	24,890,525	Loss of profits	DEM	8,896,300	180,888	Part or all of loss sustained outside compensable period and/or area (see para. 77). Insufficient evidence of value.	180,888
					Insurance	DEM	747,000	0	Part or all of loss sustained outside compensable period and/or area (see para. 77).	
					Fuel	DEM	17,668,000	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
					Interest	DEM	11,568,000	Pending	To be resolved by Governing Council (see paras. 221-222).	

C im .	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
		Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
936	Rickmers Linie GmbH Hamburg	USD	1,138,175	1,138,175	Insurance	USD	114,918	0	Part or all of loss sustained outside compensable area (see para. 77).	0
					Fuel	USD	1,023,257	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
940	Lufthansa Cargo Airlines GmbH	USD	867,949	867,949	Insurance	USD	867,949	0	Part or all of loss sustained outside compensable area (see para. 77).	0
943	Condor Flugdienst GmbH	USD	883,438	2,295,512	Re-routing	DEM	1,825,096	0	Losses relating to re-routing are not direct (see paras. 97-99).	0
		DEM	2,205,660		Insurance	DEM	380,564	0	Part or all of claim is unsubstantiated.	
						USD	883,438	0		
225	Concord Carriers Limited	USD	68,898	68,898	Insurance	USD	60,648	0	Not compensable under Governing Council decision 19 (see para. 140).	0
					Payments to staff	USD	8,250	0		
226	Gourdomichalis Maritime SA	USD	10,817	10,817	Insurance	USD	10,817	0	Not compensable under Governing Council decision 19 (see para. 140).	0
227	Bilinder Marine Corporation SA	USD	4,643,003	4,643,003	Payments to staff	USD	1,199,268	324,555	Part or all of loss sustained outside compensable period and/or area (see para. 77).	1,161,328
					Insurance	USD	3,443,735	836,773	Part or all of loss sustained outside compensable period and/or area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	

UNCC claim no.	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
		Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
4000273	Malev Hungarian Airlines PLC	KWD	440,400	1,523,875	Loss of profits	KWD	435,600	820,273	Part or all of loss sustained outside compensable period (see para. 77).	826,501
					Tangible property	KWD	4,800	6,228	Part or all of claim is unsubstantiated. Insufficient evidence of value.	
4000282	Hungarocamion International Road Transport Company Limited by Shares	USD	260,753	260,753	Advance rental payments	USD	249,750	46,884	Part or all of loss sustained outside compensable period (see para. 77).	48,389
					Tangible property	USD	4,011	1,505	Insufficient evidence of value.	
					Loss of cash	USD	3,364	0	Part or all of claim is unsubstantiated.	
					Loss of profits	USD	3,628	0		
4000648	Air India	USD	1,706,645	1,706,645	Tangible property	USD	478,552	91,435	Insufficient evidence of value.	223,983
					Loss of profits	USD	625,915	0	Part or all of claim is unsubstantiated.	
					Unpaid receivables	USD	602,178	132,548		
4000722	Air India Limited	USD	9,274,926	9,274,926	Bank balance	USD	9,274,926	8,344,926	Non-compensable element of bank balance claim (see para. 169).	8,344,926
4001348	Aer Lingus PLC	IEP	95,780	164,005	Payments to staff	IEP	71,166	118,561	Part or all of loss is not direct (see para. 53).	159,879
					Evacuation	IEP	4,414	5,817		
					Payment or relief to others	IEP	20,200	35,501	N/A	
4001352	GPA Group PLC	USD	111,949	111,949	Insurance	USD	111,949	0	Part or all of claim is unsubstantiated.	0

UNCC claim no.	Claimant	Total amount cl[illegible]			Reclassified amount			Decision of the Panel		
		Amount claimed in original currency a/		Tot[illegible]ount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
001339	Islamic Republic of Iran Shipping Lines Valfajre - 8 shipping lines (affiliated)	USD	560,373	560,373	Payments to staff	USD	9,053	0	Part or all of claim is unsubstantiated.	56,808
					Other losses	USD	355	0		
					Insurance	USD	59,935	0		
					Loss of profits	USD	426,030	56,808	Insufficient evidence of value. Part or all of claim is unsubstantiated.	
					Fuel	USD	50,000	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
					Claim preparation costs	USD	15,000	Pending	To be resolved by Governing Council (see para. 223).	
000328	El-Al Israel Airline Limited	USD	73,379,128	73,379,128	Re-routing	USD	399,745	0	Losses relating to re-routing are not direct (see paras. 97-99).	6,977,711
					Relocation of fleet	USD	4,895,546	4,895,546	N/A	
					Loss of profits	USD	37,622,214	1,908,594	Part or all of loss sustained outside compensable period (see para. 77).	
					Insurance	USD	1,043,580	173,571	Part or all of loss sustained outside compensable period (see para. 77). Non compensable risks covered by war risk insurance (see para. 91).	
					Fuel	USD	29,418,043	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
000341	Arkia Israeli Airlines Limited	USD	2,445,163	2,445,163	Loss of profits	USD	2,445,163	0	Part or all of claim is unsubstantiated.	0
001100	Zim Israel Navigation Company Limited	USD	1,097,200	1,097,200	Loss of profits	USD	1,097,200	0	Trade embargo is sole cause of loss (see para. 109-112).	0

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60	Italy	4001058	Navigazione Alga SpA	USD	139,986	139,986	Loss of profits	USD	139,986	0	Part or all of claim is unsubstantiated.	0
61	Italy	4001074	Compagnia Ligure di Navigazione SRL	USD	1,468,809	1,468,809	Tangible property (ship)	USD	1,212,500	0	Part or all of loss is not direct (see para. 53).	0
							Interest	USD	256,309	0	Principal amount not compensable.	
62	Italy	4001280	Carbofin Spa	USD	276,314	276,314	Insurance	USD	276,314	153,036	Part or all of loss sustained outside compensable area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	153,036
63	Italy	4001296	Comisal SpA (now Termisal SpA)	ITL	2,446,000,000	2,109,894	Payments to staff	ITL	30,000,300	0	Part or all of loss sustained outside compensable area (see para. 77).	0
							Loss of profits	ITL	2,134,999,300	0		
							Insurance	ITL	281,000,400	0	Part or all of claim is unsubstantiated.	
64	Italy	4001329	Lloyd Triestino di Navigazione SpA	USD	137,082	137,082	Tangible property (containers)	USD	117,262	39,813	Insufficient evidence of value.	39,813
							Insurance	USD	19,820	0	Part or all of claim is unsubstantiated.	
65	Italy	4001331	Premuda Societa di Navigazione per Azioni	USD	1,398	15,317	Insurance	USD	1,398	0	Part or all of claim is unsubstantiated.	0
				ITL	16,135,750			ITL	16,135,750	0		
66	Italy	5000101	Alitalia-Linee Aeree Italiane SpA	ITL	397,419,604,000	342,809,975	Loss of profits	ITL	275,545,163,000	6,902,964	Calculated loss is less than loss alleged (see paras. 180-207).	6,902,964
							Insurance	ITL	7,721,597,000	0		
							Fuel	ITL	111,739,187,000	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
							Re-routing	ITL	2,332,250,000	0	Losses relating to re-routing are not direct (see paras. 97-99).	
							Other losses	ITL	81,407,000	0	Part or all of loss is not direct (see para. 53).	
67	Italy	5000102	Aero Trasporti Italiani ITA SpA	ITL	69,988,000,000	60,370,913	Loss of profits	ITL	43,795,000,000	0	Part or all of claim is unsubstantiated.	0
							Insurance	ITL	37,000,000	0		

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				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
							Fuel	ITL	26,156,000,000	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
68	Japan	4000967	Japan Airlines Co. Limited	JPY	221,801,534	1,537,619	Tangible property	JPY	18,445,405	95,903	Insufficient evidence of value.	1,365,636
							Bank balance	JPY	201,971,084	1,260,131	Non-compensable element of bank balance claim (see para. 169).	
							Loss of contracts	JPY	1,385,045	9,602	N/A	

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69	Jordan	4002435	Royal Jordanian Airlines	JOD USD	38,720,681 233,741,649	292,587,670	Payments to staff	USD	351,073	205,852	Insufficient evidence of value.	15,373,507
							Loss of profits	USD	219,618,810	10,397,368	Calculated loss is less than loss alleged (see paras. 180-207).	
							Relocation of fleet	USD	917,441	917,441	N/A	
							Insurance	USD	7,508,809	3,820,998	Part or all of loss sustained outside compensable period (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	
							Re-training of pilots	USD	308,700	31,848	Part or all of loss is not direct (see para. 53).	
							Fuel	USD	11,177,704	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
							Re-routing	USD	286,158	0	Losses relating to re-routing are not direct (see paras. 97-99).	
							Unpaid receivables	USD	346,286	0	Part or all of loss is not direct (see para. 53).	
							Other losses	USD	15,906,525	0		
							Interest	USD	36,166,164	Pending	To be resolved by Governing Council (see paras. 221-222).	
70	Jordan	4002621	Ministry of Transport/ Jordanian National Shipping Lines Company Limited (J.N.S.L.)	JOD	43,856,862	66,651,766	Loss of profits	JOD	38,066,609	0	Part or all of loss sustained outside compensable area (see para. 77).	0
							Interest	JOD	5,790,253	0	Principal amount not compensable.	

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				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
71	Jordan	4002622	Public Transport Corporation	JOD	9,142,475	13,894,339	Loss of profits	JOD	7,418,426	0	Part or all of loss sustained outside compensable area (see para. 77).	0
							Interest	JOD	1,724,049	0	Principal amount not compensable.	
72	Jordan	4002623	Jordanian Syrian Land Transport Company	JOD	2,292,782	3,484,471	Loss of profits	JOD	1,772,162	0	Part or all of loss sustained outside compensable area (see para. 77).	0
							Interest	JOD	520,620	0	Principal amount not compensable.	
73	Jordan	4002625	Unified Company for Organising Land Transport	JOD	2,586,962	3,931,553	Payment or relief to others	JOD	201,012	301,820	N/A	537,652
							Payments to staff	JOD	65,000	97,598	N/A	
							Loss of profits	JOD	1,944,345	138,234	Calculated loss is less than loss alleged (see paras. 180-207).	
							Interest	JOD	376,605	Pending	To be resolved by Governing Council (see paras. 221-222).	
74	Jordan	4005970	Jordan Express Tourist Transport Company Limited	JOD	4,945,600	7,516,109	Loss of profits	JOD	4,153,263	0	Part or all of loss sustained outside compensable area (see para. 77).	0 c/
							Interest	JOD	792,337	0	Principal amount not compensable.	
75	Korea	4001098	Korean Airlines Co. Limited	USD	5,238,560	5,238,560	Bank balance	USD	5,328,560	4,699,547	Non-compensable element of bank balance claim (see para. 169).	4,699,547
76	Liberia	4001135	Star Value Shipping Corporation	USD	134,516	134,516	Insurance	USD	134,516	121,322	Non-compensable risks covered by war risk insurance (see para. 91).	121,322
77	Liberia	4001136	Treasure Shipping & Trading Company	USD	58,030	58,030	Insurance	USD	58,030	26,113	Part or all of loss sustained outside compensable area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	26,113

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78	Liberia	4001138	Bannon Trading Incorporated	USD	23,060	23,060	Insurance	USD	23,060	0	Part or all of loss sustained outside compensable area (see para. 77).	0
79	Liberia	4001139	Brookstream Shipping Incorporated	USD	178,513	178,513	Insurance	USD	178,513	4,821	Part or all of loss sustained outside compensable area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	4,821
80	Liberia	4001140	Intrepid Marine Investments Limited	USD	175,421	175,421	Insurance	USD	175,421	31,642	Part or all of loss sustained outside compensable area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	31,642
81	Liberia	4001141	Golar Perth Incorporated	USD	9,625	9,625	Insurance	USD	9,625	0	Part or all of loss sustained outside compensable area (see para. 77).	0
82	Liberia	4001142	Golar Khannur Incorporated	USD	17,269	17,269	Insurance	USD	17,269	0	Part or all of loss sustained outside compensable area (see para. 77).	0
83	Liberia	4001143	Gotaas-Larsen Tankship Incorporated	USD	9,625	9,625	Insurance	USD	9,625	8,662	Non-compensable risks covered by war risk insurance (see para. 91).	8,662
84	Liberia	4001144	Golar Freeze Incorporated	USD	6,552	6,552	Insurance	USD	6,552	0	Part or all of loss sustained outside compensable area (see para. 77).	0
85	Liberia	4001145	Golar Hilli Incorporated	USD	5,335	5,335	Insurance	USD	5,335	0	Part or all of loss sustained outside compensable area (see para. 77).	0
86	Liberia	4001146	Golar Gimi Incorporated	USD	17,269	17,269	Insurance	USD	17,269	0	Part or all of loss sustained outside compensable area (see para. 77).	0
87	Liberia	4001159	Margarita Shipping SA c/o Enterprises Shipping and Trading SA	USD	790	790	Insurance	USD	790	0	Part or all of loss sustained outside compensable period (see para. 77).	0

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88	Liberia	4001160	Aurora Borealis Maritime Corporation	USD	95,213	95,213	Payments to staff	USD	34,339	0	Part or all of loss sustained outside compensable area (see para. 77).	0
							Insurance	USD	60,874	0		
89	Liberia	4001161	Zarnata Maritime Corporation	USD	34,611	34,611	Payments to staff	USD	14,576	14,576	N/A	32,607
							Insurance	USD	20,035	18,031	Non-compensable risks covered by war risk insurance (see para. 91).	
90	Liberia	4001162	Lavandara Maritime Corporation	USD	17,074	17,074	Payments to staff	USD	2,713	0	Part or all of loss sustained outside compensable area (see para. 77).	0
							Insurance	USD	14,361	0		
91	Liberia	4001163	Ateni Maritime Corporation	USD	62,275	62,275	Payments to staff	USD	33,346	28,861	Part or all of claim is unsubstantiated.	54,897
							Insurance	USD	28,929	26,036	Non-compensable risks covered by war risk insurance (see para. 91).	
92	Liberia	4001164	Aurora Australis Maritime Corporation	USD	324,811	324,811	Payments to staff	USD	56,584	36,467	Part or all of loss sustained outside compensable area (see para. 77).	259,248
							Insurance	USD	268,227	222,781	Part or all of loss sustained outside compensable area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	
93	Liberia	4001165	Leopard Shipping Corporation c/o Enterprises Shipping and Trading SA	USD	3,517	3,517	Insurance	USD	3,517	0	Part or all of loss sustained outside compensable period (see para. 77).	0
94	Liberia	4001166	Spartan Marine Limited c/o Enterprises Shipping and Trading SA	USD	2,290	2,290	Insurance	USD	2,290	0	Part or all of loss sustained outside compensable period (see para. 77).	0

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95	Liberia	4001167	Plakoura Maritime Corporation	USD	99,954	99,954	Insurance	USD	66,944	0	Part or all of loss sustained outside compensable period and/or area (see para. 77).	0
							Payments to staff	USD	33,010	0		
96	Liberia	4001168	Akoi Maritime Corporation	USD	35,713	35,713	Insurance	USD	15,442	0	Part or all of loss sustained outside compensable area (see para. 77).	0
							Payments to staff	USD	20,271	0		
97	Liberia	4001169	Boukadoura Maritime Corporation	USD	153,902	153,902	Insurance	USD	98,607	49,048	Part or all of loss sustained outside compensable area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	67,373
							Payments to staff	USD	55,295	18,325	Part or all of loss sustained outside compensable area (see para. 77).	
98	Liberia	4001170	Seahope Shipping Corporation c/o Enterprises Shipping and Trading SA	USD	25,779	25,779	Insurance	USD	25,779	0	Part or all of loss sustained outside compensable area (see para. 77). Part or all of claim is unsubstantiated.	0
99	Liberia	4001171	Navicargo Shipping Company SA	USD	42,295	42,295	Insurance	USD	42,295	0	Part or all of loss sustained outside compensable area (see para. 77). Part or all of claim is unsubstantiated.	0
100	Liberia	4001172	Enterprises Shipping and Trading SA	USD	103,240	103,240	Insurance	USD	103,240	0	Part or all of loss sustained outside compensable period (see para. 77).	0
101	Liberia	4001173	Myrtia Marine SA c/o Enterprises Shipping and Trading SA	USD	790	790	Insurance	USD	790	0	Part or all of loss sustained outside compensable period (see para. 77).	0
102	Liberia	4001174	Mimoza Marine SA c/o Enterprises Shipping and Trading SA	USD	21,569	21,569	Insurance	USD	21,569	0	Part or all of loss sustained outside compensable period and/or area (see para. 77).	0

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103	Liberia	4001175	Eptal'ofos Shipping Corporation	USD	357,998	357,998	Insurance	USD	357,998	147,329	Part or all of loss sustained outside compensable area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	147,329
104	Liberia	4001176	Magnolia Shipping SA c/o Enterprises Shipping and Trading SA	USD	18,137	18,137	Insurance	USD	18,137	0	Part or all of loss sustained outside compensable area (see para. 77).	0
105	Luxembourg	4001147	Cargolux Airlines International SA	USD	1,666,969	1,666,969	Insurance	USD	1,666,969	0	Part or all of claim is unsubstantiated.	0
106	Malta	4001126	Seamusic Shipping Company Limited	USD	2,550,000	2,550,000	Loss of profits	USD	2,550,000	0	Part or all of claim is unsubstantiated.	0
107	Malta	4001127	Canso Shipping Limited	USD	21,067	21,067	Insurance	USD	21,067	6,497	Part or all of loss sustained outside compensable area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	6,497

	Submitting Country	UNCC claim no.	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
108	Malta	4001128	Margarita Investments Company Limited	USD	49,125	49,125	Loss of profits	USD	30,000	22,500	Part or all of claim is unsubstantiated.	31,106
							Insurance	USD	19,125	8,606	Part or all of loss sustained outside compensable area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	
109	Malta	4001129	Elena Shipping Limited	USD	45,008	45,008	Insurance	USD	45,008	20,254	Part or all of loss sustained outside compensable area (see para. 77) Non-compensable risks covered by war risk insurance (see para. 91).	20,254
110	Malta	4001130	Air Malta Company Limited	USD	5,333,193	5,333,193	Loss of profits	USD	694,800	0	Part or all of loss sustained outside compensable area (see para. 77).	0
							Insurance	USD	92,406	0	Part or all of loss sustained outside compensable period and/or area (see para. 77).	
							Fuel	USD	4,545,987	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
111	Netherlands	4001397	Climax Molybdenum B.V.	USD	6,200	6,200	Loss of profits	USD	6,200	0	Part or all of loss sustained outside compensable area (see para. 77).	0
112	Netherlands	4001400	Henk Braams B.V. Shipping and Forwarding	USD	1,035	1,035	Loss of profits	USD	1,035	0	Part or all of loss sustained outside compensable area (see para. 77).	0
113	Netherlands	4001411	Roba Handelmaatschappij B.V.	USD	2,740	2,740	Loss of profits	USD	2,740	0	Part or all of loss sustained outside compensable period and/or area (see para. 77).	0

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				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
114	Netherlands	4001537	KLM Royal Dutch Airlines	USD	218,603,038	218,603,038	Contract loss	USD	4,303,605	636,683	Part or all of loss is not direct (see para. 53).	29,514,664
							Tangible property	USD	177,672	66,627	Insufficient evidence of value.	
							Payments to staff	USD	257,338	96,502		
							Loss of profits	USD	204,649,714	28,714,852	Calculated loss is less than loss alleged (see paras 180-207).	
							Insurance	USD	9,214,709	0		
115	Netherlands	4001563	Martinair Holland NV	NLG	717,292	407,321	Loss of profits	NLG	393,672	0	Part or all of claim is unsubstantiated.	0
							Fuel	NLG	323,620	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
116	Netherlands	4001564	Vroon International BV	USD	1,307,183	1,307,183	Contract loss	USD	1,307,183	326,796	Part or all of loss is not direct (see para. 53). Deduction for failure to mitigate (see para. 114).	326,796
117	Netherlands	4001566	Vervoersmaatschappij "De Boezem" B.V.	NLG	800	454	Unpaid receivables	NLG	800	0	Part or all of claim is unsubstantiated.	0
118	Netherlands	4001569	Van der Sluijs Tankrederij B.V.	USD	416,800	416,800	Fuel	USD	416,800	0	Losses relating to fuel costs are not direct (see paras. 94-96).	0
119	Norway	4001156	Bergen Bulk Carriers A/S	USD	241,165	241,165	Insurance	USD	241,165	83,150	Part or all of loss sustained outside compensable period and/or area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	83,150
120	Norway	4001157	Marawah KS c/o Stavanger Drilling A/S	USD	442,175	442,175	Loss of profits	USD	35,000	0	Part or all of loss sustained outside compensable area (see para. 77).	0
							Insurance	USD	407,175	0		

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				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
121	Norway	4001158	Araba Holdings Incorporated c/o Gearbulk Limited	USD	1,125,771	1,125,771	Loss of profits	USD	735,611	0	Trade embargo is sole cause of loss (see para. 109-112).	390,160
							Unpaid receivables	USD	390,160	390,160	N/A	
122	Pakistan	4001203	Pakistan International Airlines Corporation	KWD	4,573,861	15,826,509	Tangible property	KWD	20,738	0	Part or all of claim is unsubstantiated.	0
							Other tangible property	KWD	454,336	0		
							Payments to staff	KWD	98,787	0		
							Loss of profits	KWD	4,000,000	0		
123	Panama	4001206	Oyster Marine Management Incorporated SA	USD	232,661	232,661	Payments to staff	USD	38,000	0	Part or all of claim is unsubstantiated.	133,821
							Loss of profits	USD	143,181	96,081	Part or all of loss is not direct (see para. 53). Calculated loss is less than loss alleged (see paras. 180-207).	
							Insurance	USD	30,000	27,000	Non-compensable risks covered by war risk insurance (see para. 91).	
							Other losses	USD	21,480	10,740	Part or all of loss is not direct (see para. 53).	
124	Panama	4001216	Calera Panama SA	USD	12,811	12,811	Insurance	USD	12,811	0	Part or all of loss sustained outside compensable period (see para. 77).	0
125	Panama	4001217	Kelso Panama SA	USD	7,168	7,168	Insurance	USD	7,168	0	Part or all of loss sustained outside compensable period (see para. 77).	0
126	Panama	4001218	Osborne Panama SA	USD	5,990	5,990	Insurance	USD	5,990	0	Part or all of loss sustained outside compensable period (see para. 77).	0
127	Panama	4001220	Granton Marine Panama SA	USD	14,133	14,133	Insurance	USD	14,133	0	Part or all of loss sustained outside compensable period (see para. 77).	0

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				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
128	Panama	4001221	Beverly Marine Panama SA	USD	38,813	38,813	Insurance	USD	38,813	6,385	Part or all of loss sustained outside compensable period and/or area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	6,385
129	Panama	4001222	Grafton Shipping Panama SA	USD	69,921	69,921	Insurance	USD	69,921	46,780	Part or all of loss sustained outside compensable period and/or area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	46,780
130	Poland	4001320	LOT Polish Airlines SA Polskie Linie Lotnicze LOT SA	USD	8,633,410	8,633,410	Loss of profits	USD	8,633,410	34,365	Part or all of claim is unsubstantiated. Calculated loss is less than loss alleged (see paras. 180-207).	34,365
131	Poland	4001332	Pekeas Auto-Transport Joint Stock Company	USD	2,741,506	2,741,506	Advance rental payments	USD	159,347	18,756	Part or all of loss sustained outside compensable period (see para. 77).	31,946
							Loss of profits	USD	220,824	0	Insufficient evidence of value.	
							Unpaid receivables	USD	2,185,160	0	Part or all of claim is unsubstantiated.	
							Other losses	USD	21,200	13,190	Part or all of loss sustained outside compensable period (see para. 77).	
							Claim preparation costs	USD	154,975	Pending	To be resolved by Governing Council (see para. 223).	

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				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
132	Portugal	4001226	TAP Air Portugal	USD	134,866	134,866	Insurance	USD	112,453	0	Part or all of loss sustained outside compensable area (see para. 77).	0
							Interest	USD	22,413	0	Principal amount not compensable.	
133	Russian Federation	4005779	Aeroflot Russian International Airlines	USD	29,231,313	29,231,313	Advance rental payments / Tangible property / Repairs	USD	5,426,499	277	Part or all of loss sustained outside compensable period (see para. 77). Part or all of claim is unsubstantiated. Part or all of loss is not direct (see para. 53).	6,058,610
							Evacuation	USD	6,914,912	4,654,423	Calculated loss is less than loss alleged (see paras. 180-207).	
							Loss of profits	USD	14,702,231	1,403,910	Calculated loss is less than loss alleged (see paras. 180-207). Part or all of loss sustained outside compensable period (see para. 77).	
							Re-routing	USD	2,187,671	0	Losses relating to re-routing are not direct (see paras. 97-99).	
134	Saudi Arabia	4002461	Saudi Limousine Company Limited	SAR	715,000	190,921	Loss of profits	SAR	715,000	0	Part or all of claim is unsubstantiated.	0

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				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
135	Saudi Arabia	4002482	The National Shipping Company of Saudi Arabia	USD	3,607,560	3,616,907	Payments to staff	USD	346,813	0	Part or all of claim is unsubstantiated.	287,440
				SAR	35,000		Loss of profits	USD	322,592	0		
							Insurance	USD	1,554,031	287,440	Part or all of loss is not direct (see para. 53). Part or all of loss sustained outside compensable period (see para. 77). Non compensable risks covered by war risk insurance (see para. 91).	
							Other losses	USD	1,384,124	0	Part or all of claim is unsubstantiated.	
							Claim preparation costs	SAR	35,000	Pending	To be resolved by Governing Council (see para. 223).	
136	Saudi Arabia	4002538	Kanoo Terminal Services Limited	SAR	203,104	386,129	Payments to staff	SAR	184,204	16,321	Part or all of claim is unsubstantiated.	21,368
							Other losses	SAR	18,900	5,047	N/A	
137	Singapore	4001478	Singapore Airlines Limited	USD	1,648,848	1,648,848	Insurance	USD	1,648,848	0	Part or all of loss sustained outside compensable area (see para. 77).	0
138	Spain	4001576	Hoppe y Compania SA	ESP	12,012,177	123,392	Unpaid receivables	ESP	9,259,502	82,647	Pre-existing debt (see para. 151).	82,647
							Interest	ESP	2,752,675	Pending	To be resolved by Governing Council (see paras. 221-222).	
139	Spain	4001591	Roca Monzo SA	ESP	4,515,000	46,379	Loss of profits	ESP	4,515,000	0	Part or all of loss is not direct (see para. 53).	0
140	Sri Lanka	4001668	Srilankan Airlines Limited (formerly Airlanka)	USD	2,479,052	2,479,052	Insurance	USD	2,479,052	690,540	Calculated loss is less than loss alleged (see paras. 180-207). Non-compensable risks covered by war risk insurance (see para. 91).	690,540

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141	Sudan	4001373	Sudan Airways	USD	82,881,935	82,881,935	Bank balance	USD	22,356,954	21,566,194	Non-compensable element of bank balance claim (see para. 169).	28,051,181
							Evacuation	USD	5,198,738	1,219,069	Calculated loss is less than loss alleged (see paras. 180-207).	
							Loss of profits	USD	47,669,548	5,265,918		
							Insurance	USD	1,031,608	0		
							Interest	USD	6,625,087	Pending	To be resolved by Governing Council (see paras. 221-222).	
142	Sudan	4001448	Sudan Shipping Line Limited	USD	15,526,590	15,526,590	Payments to staff	USD	570,000	0	Part or all of loss is not direct (see para. 53).	619,853
							Evacuation	USD	1,510,288	619,853	Part or all of claim is unsubstantiated.	
							Loss of profits	USD	13,030,890	0	Part or all of claim is unsubstantiated. Calculated loss is less than loss alleged (see paras. 180-207).	
							Insurance	USD	415,412	0	Part or all of loss sustained outside compensable area (see para. 77).	
143	Sweden	4001481	Scandinavian Airlines System Denmark - Norway - Sweden	USD	1,034,843	1,034,843	Insurance	USD	1,034,843	10,803	Calculated loss is less than loss alleged (see paras. 180-207). Non-compensable risks covered by war risk insurance (see para. 91).	10,803

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144	Switzerland	4001511	"Swissair" Swiss Air Transport Company Limited	CHF	52,958,741	40,989,738	Tangible property	CHF	380,760	142,366	Insufficient evidence of value.	8,207,915
							Other tangible property	CHF	116,681	45,156		
							Payments to staff	CHF	422,715	305,272	N/A	
							Loss of profits	CHF	41,516,800	6,934,923	Calculated loss is less than loss alleged (see paras. 180-207).	
							Insurance	CHF	8,961,499	718,168	Part or all of loss sustained outside compensable period and/or area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	
							Fuel	CHF	1,400,000	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
							Unpaid receivables	CHF	160,286	62,030	Part or all of claim is unsubstantiated.	

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145	Thailand	4001596	Thai Airways International Limited	USD	17,098,310	17,098,310	Contract loss	USD	1,324,889	35,938	Part or all of loss sustained outside compensable period (see para. 77). Insufficient evidence of value	9,687,326
							Tangible property	USD	39,608	19,804	Insufficient evidence of value.	
							Payments to staff	USD	107,351	107,351	N/A	
							Loss of profits	USD	12,506,992	8,983,836	Part or all of loss sustained outside compensable period (see para. 77). Calculated loss is less than loss alleged (see paras. 180-207).	
							Insurance	USD	1,423,079	334,532	Part or all of loss sustained outside compensable period and/or area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	
							Unpaid receivables	USD	1,113,600	205,865	Pre-existing debt (see para. 151)	
							Other losses	USD	582,791	0	Part or all of claim is unsubstantiated.	
146	Tunisia	4002605	Compagnie Tunisienne de Navigation	USD	13,560,000	13,560,000	Loss of profits	USD	11,392,000	0	Insufficient evidence of value. Part or all of loss sustained outside compensable area (see para. 77).	0
							Unpaid receivables	USD	14,000	0	Part or all of claim is unsubstantiated.	
							Fuel	USD	2,154,000	0	Losses relating to fuel costs are not direct (see paras. 94-96).	

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147	Tunisia	4002606	Societe Tunisienne de L'Air "Tunisair"	TND	50,482,367	58,632,250	Evacuation	TND	505,866	397,498	Part or all of claim is unsubstantiated.	8,307,476
							Loss of profits	TND	38,810,119	7,907,674	Calculated loss is less than loss alleged (see paras. 180-207).	
							Insurance	TND	476,074	2,304	Part or all of loss sustained outside compensable period and/or area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	
							Fuel	TND	10,690,308	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
148	Turkey	4001599	Cemre Shipping and Trading Company	USD	524,250	524,250	Contract loss	USD	277,250	93,500	Part or all of claim is unsubstantiated.	220,086
							Loss of profits	USD	22,000	0		
							Unpaid receivables	USD	67,500	0		
							Payments to staff	USD	32,500	32,500	N/A	
							Insurance	USD	125,000	94,086	Part or all of loss sustained outside compensable period (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	
149	Turkey	4001605	Enak Marketing, Storage Transportation Corporation	USD	157,500	157,500	Tangible property (containers)	USD	156,000	58,500	Insufficient evidence of value.	58,500
							Other losses	USD	1,500	0	Part or all of claim is unsubstantiated.	

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150	Turkey	4001606	Oztecirli International Transport	USD	41,684	41,684	Tangible property (trucks)	USD	26,589	13,294	Insufficient evidence of value.	13,294
							Loss of profits	USD	15,095	0	Part or all of claim is unsubstantiated.	
151	Turkey	4001651	DB Turkish Cargo Lines	USD	7,031,559	7,150,845	Loss of profits	USD	6,980,139	0	Part or all of claim is unsubstantiated.	0
				DEM	186,324		Loss of profits	DEM	186,324	0		
							Insurance	USD	51,420	0	Part or all of loss sustained outside compensable period and/or area (see para. 77).	
152	Turkey	4001723	Bamtrans International Transport & Trade Company Limited	USD	59,233	59,233	Unpaid receivables	USD	59,233	0	Pre-existing debt (see para. 151) Part or all of claim is unsubstantiated.	0
153	Turkey	4001724	Akan Sel International Transport Company	USD	1,537,209	1,537,209	Loss of profits	USD	666,182	0	Part or all of claim is unsubstantiated.	201,503
							Bank balance	USD	78,834	0	Part or all of loss is not direct (see para. 53).	
							Unpaid receivables	USD	620,624	201,503	Pre-existing debt (see para. 151).	
							Interest	USD	171,569	Pending	To be resolved by Governing Council (see paras. 221-222).	
154	Turkey	4001725	Surat International Transport Export Incorporated	USD	138,061	138,061	Unpaid receivables	USD	80,188	80,188	N/A	80,188
							Bank balance	USD	57,873	0	Part or all of loss is not direct (see para. 53).	
155	Turkey	4001755	Turkish Airlines Incorporated	USD	30,518,080	30,518,080	Loss of profits	USD	26,023,509	23,104,971	Calculated loss is less than loss alleged (see paras. 180-207).	23,398,071
							Insurance	USD	4,265,464	63,993	Calculated loss is less than loss alleged (see paras. 180-207). Non-compensable risks covered by war risk insurance (see para. 91).	
							Unpaid receivables	USD	229,107	229,107	N/A	

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156	United Arab Emirates	4001694	Dubai Air Wing	USD	829,676	829,676	Insurance	USD	829,676	0	Part or all of loss sustained outside compensable area (see para. 77).	0
157	United Arab Emirates	4001749	Emirates	USD	10,596,254	10,596,254	Tangible property	USD	53,015	26,522	Insufficient evidence of value.	8,782,826
							Tangible property (containers)	USD	10,472	5,239		
							Loss of cash	USD	2,382	0	Part or all of claim is unsubstantiated.	
							Payments to staff	USD	136,367	27,266	Part or all of claim is unsubstantiated. Insufficient evidence of value.	
							Loss of profits	USD	8,723,799	8,723,799	N/A	
							Insurance	USD	274,585	0	Calculated loss is less than loss alleged (see paras. 180-207).	
							Fuel	USD	1,325,402	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
							Unpaid receivables	USD	70,232	0	Part or all of loss is not direct (see para. 53).	
158	United Kingdom	4001848	Cathay Pacific Airways Limited	KWD	60,941	210,869	Payments to staff	KWD	4,813	0	Part or all of claim is unsubstantiated.	0
							Unpaid receivables	KWD	56,128	0	Part or all of claim is unsubstantiated.	
159	United Kingdom	4001893	Monarch Airlines Limited	GBP	2,416,239	4,593,610	Loss of profits	GBP	1,966,503	0	Part or all of loss sustained outside compensable area (see para. 77).	0
							Insurance	GBP	5,937	0		
							Interest	GBP	443,799	0	Principal amount not compensable.	
160	United Kingdom	4001945	Orient Overseas Container Line Limited	USD	429,234	429,234	Insurance	USD	429,234	0	Part or all of loss sustained outside compensable area (see para. 77).	0

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161	United Kingdom	4001999	Norasia Lines Limited	USD	3,952,480	3,952,480	Tangible property (containers)	USD	1,222,199	222,199	Calculated loss is less than loss alleged (see paras. 180-207).	257,149
							Loss of profits	USD	816,746	0	Part or all of claim is unsubstantiated.	
							Insurance	USD	1,294,278	15,783	Part or all of loss sustained outside compensable period and/or area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	
							Payments to staff	USD	59,800	19,167	Part or all of loss sustained outside compensable period and/or area (see para. 77).	
							Unpaid receivables	USD	24,645	0	Part or all of claim is unsubstantiated.	
							Interest	USD	529,153	Pending	To be resolved by Governing Council (see paras. 221-222).	
							Claim preparation costs	USD	5,659	Pending	To be resolved by Governing Council (see para. 223).	
162	United Kingdom	4002018	Ellerman Lines PLC	GBP	96,414	183,297	Tangible property (containers)	GBP	96,414	91,648	Insufficient evidence of value.	91,648

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163	United Kingdom	4002094	World Wide Shipping Agency Limited	USD	17,849,106	17,849,106	Payments to staff	USD	376,328	178,307	Part or all of loss sustained outside compensable area (see para. 77). Part or all of claim is unsubstantiated.	6,916,314
							Fuel	USD	613,286	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
							Insurance	USD	16,859,492	6,738,007	Part or all of loss sustained outside compensable period and/or area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	
164	United Kingdom	4002111	Gracesea Limited	USD	10,287,803	10,287,803	Loss of profits	USD	9,872,735	0	Part or all of loss sustained outside compensable period (see para. 77).	48,127
							Insurance	USD	415,068	48,127	Part or all of loss sustained outside compensable area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	
165	United Kingdom	4002154	Blue Star Line Limited	GBP	155,712	296,030	Other tangible property	GBP	66,278	63,002	Insufficient evidence of value.	179,439
							Tangible property (containers)	GBP	89,434	116,437		
166	United Kingdom	4002261	Cathay Pacific Airways Limited	USD	4,988,596	4,988,596	Insurance	USD	4,988,596	0	Part or all of loss sustained outside compensable area (see para. 77).	0

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	Submitting Country	UNCC claim no.	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
167	United Kingdom	4002267	British Airways Plc	GBP	5,691,133	16,459,012	Tangible property	GBP	242,498	230,511	Insufficient evidence of value.	6,142,853
				USD	5,639,368			USD	145,127	145,127	N/A	
							Payments to staff	GBP	1,411,130	2,098,777	Part or all of loss is not direct (see para. 53). Part or all of claim is unsubstantiated. Deduction to avoid multiple recovery (See para. 181).	
							Loss of profits	GBP	2,214,378	1,924,076	Part or all of loss is not direct (see para. 53). Part or all of claim is unsubstantiated.	
							Insurance	GBP	1,823,125	906,606	Part or all of loss sustained outside compensable period and/or area (see para. 77). Non-compensable risks covered by war risk insurance (see para. 91).	
								USD	5,494,241	837,756		
168	United Kingdom	4002278	GB Airways Limited	GBP	190,768	362,677	Loss of profits	GBP	190,768	0	Part or all of loss sustained outside compensable area (see para. 77).	0
169	United Kingdom	4002292	The Hadley Shipping Company Limited	USD	97,119	97,119	Loss of profits	USD	37,170	0	Trade embargo is sole cause of loss (see para. 109-112).	0
							Insurance	USD	59,949	0	Part or all of loss sustained outside compensable area (see para. 77).	

	Submitting Country	UNCC claim no.	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
170	United Kingdom	4005969	Thomson Travel	USD	4,989,552	5,071,153	Insurance	GBP	42,922	0	Part or all of loss sustained outside compensable area (see para. 77).	0 d/
				GBP	42,922			USD	256,785	0		
							Fuel	USD	4,351,048	0	Losses relating to fuel costs are not direct (see paras. 94-96).	
							Re-routing	USD	381,719	0	Losses relating to re-routing are not direct (see para. 99).	
171	United States of America	4000620	Sea Land Service Incorporated	USD	387,675	387,675	Tangible property (containers)	USD	387,675	363,387	Part or all of claim is unsubstantiated.	363,387
172	United States of America	4000634	Waterman Steamship Corporation	USD	1,128,627	1,128,627	Insurance	USD	1,128,627	0	Not compensable under Governing Council decision 19 (see para. 140).	0
173	United States of America	4000636	Zapata Gulf Marine Corporation (A)	USD	4,171,527	4,171,527	Tangible property	USD	3,200,000	3,200,000	N/A	3,920,659
							Insurance	USD	406,800	406,800	N/A	
							Unpaid receivables	USD	157,850	157,850	N/A	
							Other losses	USD	45,000	0	Part or all of loss is not direct (see para. 53).	
							Loss of profits	USD	361,877	156,009	Part or all of claim is unsubstantiated.	
174	United States of America	4002340	American President Lines Limited	USD	1,001,880	1,001,880	Tangible property (containers)	USD	1,001,880	500,940	Insufficient evidence of value.	500,940
175	United States of America	4002341	Chestnut Shipping Company	USD	69,846	69,846	Payments to staff	USD	15,988	0	Not compensable under Governing Council decision 19 (see para. 140).	0
							Insurance	USD	53,858	0		
176	United States of America	4002344	Liberty Maritime Corporation	USD	197,643	197,643	Insurance	USD	197,643	0	Part or all of loss sustained outside compensable area (see para. 77).	0
177	United States of America	4002498	Chevron Shipping Company	USD	137,000	137,000	Insurance	USD	137,000	0	Not compensable under Governing Council decision 19 (see para. 140).	0

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	Submitting Country	UNCC claim no.	Claimant	Total amount claimed			Reclassified amount			Decision of the Panel		
				Amount claimed in original currency a/		Total amount claimed restated in USD b/	Type of loss	Amount claimed in original currency		Amount recommended in USD	Reasons for denial of whole or part of the claimed amount	Total amount recommended in USD
178	United States of America	4002505	Farrell Lines Incorporated	USD	87,200	87,200	Loss of profits	USD	87,200	0	Not compensable under Governing Council decision 19 (see para. 140).	0
179	United States of America	4002506	Gold Container Corporation	USD	132,786	132,786	Tangible property (containers)	USD	132,786	42,385	Insufficient evidence of value.	42,38

Notes to table of recommended awards

a/ Currency codes: ATS (Austrian schilling), CHF (Swiss franc), DEM (Deutsche mark), EGP (Egyptian pound), ESP (Spanish peseta), FRF (French franc), GBP (Pound sterling), IEP (Irish pound), ITL (Italian lira), JPY (Japanese yen), JOD (Jordanian dinar), KWD (Kuwaiti dinar), NLG (Netherlands guilder), SAR (Saudi Arabian riyal), SGD (Singapore dollar), TND (Tunisian dinar), USD (United States dollar).

b/ For claims originally expressed by the claimant in currencies other than United States dollars, the secretariat has converted the amount claimed to United States dollars based on August 1990 rates of exchange as indicated in the United Nations Monthly Bulletin of Statistics, or in cases where this exchange rate is not available, the latest exchange rate available prior to August 1990. This conversion is made solely to provide an indication of the amount claimed in United States dollars for comparative purposes. In contrast, the date of the exchange rate that was applied to calculate the recommended amount is described in paragraphs 214-220.

c/ The total amount stated herein reflects the total value of the claim asserted by the claimant. However, in the present instalment the Panel considered only those claims in respect of a contract to transport tourists within Jordan. Other claims by the same claimant were reviewed by this Panel in its second report under UNCC claim no. 4002626.

/...

d/ Other claims submitted by the same claimant were reviewed by the Panel in its second report under UNCC claim no. 4002128.

/...

Annex II: List of reasons stated in Annex I for denial in whole or part of the claimed amount

I. COMPENSABILITY

1. Pre-existing debt. All or part of the claim is based on a debt or obligation of Iraq that arose prior to 2 August 1990 and is outside the jurisdiction of the Commission pursuant to resolution 687 (1991). (See para. 151.)

2. Part or all of loss is not direct. The claimant has failed to demonstrate that the losses alleged are, in whole or part, a direct result of Iraq's invasion and occupation of Kuwait as required under resolution 687 (1991). (See para. 53.)

3. Losses relating to fuel costs are not direct. Additional costs stemming from increased fuel prices are not a direct result of Iraq's invasion and occupation of Kuwait as required under Resolution 687 (1991). (See para. 94-96.)

4. Losses relating to re-routing are not direct. Re-routing costs are not a direct result of Iraq's invasion and occupation of Kuwait as required under resolution 687 (1991). (See paras. 97-99.)

5. Non-compensable element of bank balance held in Iraq. A deduction is made to reflect that part of the funds which would have been expended locally by the claimant. (See para. 169.)

6. Part of loss relates to insurance cover for non-compensable risks. A deduction is made for that portion of additional premium payments in respect of cover for risks, such as terrorism, which do not result directly from Iraq's invasion and occupation of Kuwait as required under resolution 687 (1991). (See para. 91.)

7. Part or all of loss is outside compensable period. All or part of the loss occurred outside the period of time during which the Panel has determined that a loss may be directly related to Iraq's invasion and occupation of Kuwait. (See para. 77.)

8. Part or all of loss is outside compensable area. All or part of the loss occurred outside the geographical area within which the Panel has determined that a loss may be directly related to Iraq's invasion and occupation of Kuwait. (See para. 77.)

9. Trade embargo is sole cause. The loss claimed was caused exclusively by the application of the trade embargo or related measures imposed by or in implementation of resolution 661 (1990) and other relevant resolutions. (See paras. 109-112.)

10. Loss is not compensable under Governing Council decision 19. The claim relates to costs in connection with operations of the Allied Coalition Forces. (See para. 140.)

11. No loss established. The claimant has not established that any loss was suffered.

II. VERIFICATION AND VALUATION

12. Part or all of claim is unsubstantiated. The claimant has failed to file documentation substantiating its claim; or, where documents have been provided, these do not demonstrate the circumstances or amount of part or all of the claimed loss as required under article 35 of the Rules.

13. Calculated loss is less than loss alleged. Applying the Panel's valuation methodology (see paras. 180-207), the value of the claim was assessed to be less than that asserted by the claimant.

14. Insufficient evidence of value. The claimant has produced insufficient evidence to prove all or part of the value of its losses, as required under article 35 of the Rules.

/...

15. Reduction to avoid multiple recovery. Although the claim is found to be eligible, an award has already been made for the same loss in another claim before the Commission. Accordingly, the amount of compensation awarded in the other claim has been deducted from the compensation calculated for the present claim, in keeping with Governing Council decision 13, para. 3. **(See para. 181.)**

16. Deduction for failure to mitigate. The claimant has not taken such measures as were reasonable in the circumstances to minimize the loss as required under paragraph 23 of Governing Council decision 9 and paragraph 9(IV) of decision 15. (See para. 114.)

III. OTHER GROUNDS

17. Interest. The issue of methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time pursuant to Governing Council decision 16 (See para. 221). Moreover, where the Panel has recommended that no compensation be paid for the principal amounts claimed, a nil award is recommended for interest claimed on such principal amounts.

18. Claim preparation costs. The issue of claim preparation costs is to be resolved by the Governing Council at a future date. (See para. 223.)

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Annex IV

Decision concerning the third instalment of E2 claims taken by the Governing Council of the United Nations Compensation Commission at its 92nd meeting, held at Geneva on 9 December 1999*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure, the report and recommendations made by the panel of Commissioners concerning the third instalment of "E2" claims, covering one hundred and seventy-nine claims,[1] and a request from Tunisia for the withdrawal of two claims included in the Panel's report,

1. Approves the recommendations made by the panel of Commissioners, with the exception of the two withdrawn claims, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report, with the exception of the two withdrawn claims. The aggregate amounts per country, as noted in the annex to the report, are as follows:

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (US$)	Amount of compensation recommended (US$)
Austria	1	-	6,841,256	2,203,137

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* Previously issued as document S/AC.26/Dec.82 (1999).

[1] The text of the report appears in document S/AC.26/1999/22 (annex III above).

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (US$)	Amount of compensation recommended (US$)
Belgium	2	-	3,081,432	682,564
Brazil	-	1	14,201,600	nil
Brunei Darussalem	-	1	546,365	nil
Bulgaria	1	-	23,630,458	2,847,883
China	1	-	19,420,663	14,227,307
Cyprus	8	5	26,248,161	4,647,058
Czech Republic	1	-	874,599	26,066
Denmark	1	-	3,508,304	3,025,573
Egypt	2	7	428,504,189	47,547,427
Ethiopia	-	1	26,914,344	nil
Finland	1	-	346,727	96,581
France	1	3	63,553,718	25,710,845
Germany	4	4	55,809,352	2,265,219
Greece	1	2	4,722,718	1,163,328
Hungary	2	-	1,784,628	874,890
India	2	-	10,981,571	8,568,909
Ireland	1	1	275,954	159,879
Iran, Islamic Republic of	1	-	560,373	56,808
Israel	1	2	76,921,491	6,977,711
Italy	3	5	407,328,290	7,095,813
Japan	1	-	1,537,619	1,365,636
Jordan	2	4	388,065,908	15,911,159
Liberia	10	19	2,035,173	754,014
Luxembourg	-	1	1,666,969	nil
Malta	3	2	7,998,393	57,857
Netherlands	2	6	220,744,771	29,841,460
Norway	2	1	1,809,111	473,310
Pakistan	-	1	15,826,509	nil
Panama	3	4	381,497	186,986
Poland	2	-	11,374,916	66,311

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Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (US$)	Amount of compensation recommended (US$)
Portugal	-	1	134,866	nil
Republic of Korea	1	-	5,238,560	4,699,547
Russian Federation	1	-	29,231,313	6,058,610
Saudi Arabia	2	1	4,193,957	308,808
Singapore	-	1	1,648,848	nil
Spain	1	1	169,771	82,647
Sri Lanka	1	-	2,479,052	690,540
Sudan	2	-	98,408,525	28,671,034
Sweden	1	-	1,034,843	10,803
Switzerland	1	-	40,989,738	8,207,915
Thailand	1	-	17,098,310	9,687,326
Turkey	6	2	40,126,862	23,971,642
United Arab Emirates	1	1	11,425,930	8,782,826
United Kingdom	6	7	64,780,986	13,635,530
United States of America	4	5	7,314,184	4,827,371
Yugoslavia, Federal Republic of	1	-	8,713,599	3,409,141
Total	88	89	2,160,486,403	289,877,471

3. *Reaffirms* that when funds become available payments shall be made in accordance with decision 73 (S/AC.26/Dec.73 (1999)),

4. *Recalls* that when payments are made in accordance with decision 73 (S/AC.26/Dec.73 (1999)) and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), Governments shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. *Takes note*, of the withdrawal of the two claims submitted by Tunisia, which was received after the Panel signed the report and submitted its report and recommendations to the Governing Council.

/...

6. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to each respective Government.

/...

Annex V

Report and recommendations of the Panel of Commissioners concerning the first instalment of F2 claims*

Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission") appointed the present Panel of Commissioners (the "Panel"), composed of Messrs. Francisco Orrego Vicuña (Chairman), Hans van Houtte and Jen Shek Voon, 1/ to review certain category "F" Government claims ("'F2' Claims") in accordance with relevant Security Council resolutions, Governing Council decisions and the Provisional Rules for Claims Procedure (the "Rules"). 2/

2. In this first report pursuant to article 38(e) of the Rules, the Panel sets forth its recommendations to the Governing Council concerning twenty claims (the "Claims") submitted by ministries or other Government entities of the Government of the Hashemite Kingdom of Jordan (collectively, the "Claimants") that seek compensation totalling approximately US$6,602,363,972, together with interest in the further amount of US$1,538,118,771, for alleged direct loss, damage or injury as a result of Iraq's 2 August 1990 invasion and occupation of Kuwait.

3. The Claimants are listed in table 1 below, together with the total amounts of compensation they claim. 3/ For the sole purpose of comparison, claimed amounts expressed in currencies other than United States dollars have been converted to United States dollars based on August 1990 mid-point rates of exchange as indicated in the United Nations Monthly Bulletin of Statistics. 4/

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* Previously issued as document S/AC.26/1999/23.

Table 1. Summary of amounts claimed in first instalment of "F2" claims

Ministry or Entity		Principal Claimed (Original currency)	US$ equivalent		Interest Claimed (Original currency)	US$ equivalent	Total Amount Claimed (in US$)
Ministry of Social Development	JD	8,683,432	13,196,705	JD	160,780	244,347	13,441,052
Ministry of Supply	JD	46,094,591	70,052,570	JD	10,193,759	15,492,035	85,544,605
Public Security Directorate	JD	57,590,275	87,523,214	JD	16,259,963	24,711,190	112,234,404
Armed Forces	JD	638,233,435	969,959,628	JD	217,946,948	331,226,365	1,301,185,993
Ministry of Tourism and Antiquities	JD	3,033,893	4,610,780	JD	811,187	1,232,807	5,843,587
Civil Aviation Authority	JD	12,101,711	18,391,658	JD	3,161,435	4,804,612	23,196,271
Civil Defence General Directorate	JD	4,081,202	6,202,435	JD	1,326,120	2,015,380	8,217,815
Electricity Authority	US$	155,800,000	155,800,000	US$	20,655,000	20,655,000	176,455,000
Ministry of Education	JD US$	120,379,300 73,000,000	182,947,264 73,000,000	JD	37,657,532	57,230,292	313,177,556
Ministry of Energy and Mineral Resources	US$	399,285,944	399,285,944	US$	106,994,268	106,994,268	506,280,212
Ministry of Finance	JD US$ DM Yen CHF	332,985,451 3,009,248,197 356,478 4,641,956,598 98,520	506,056,916 3,009,248,197 228,219 32,182,173 76,254	JD US$ DM Yen CHF	84,241,755 590,601,813 89,119 672,846,052 33,496	128,026,983 590,601,813 57,054 4,664,767 25,926	4,271,168,303
Ministry of Health	JD US$	261,000 110,563,852	396,657 110,563,852	JD	53,500,275	81,307,409	192,267,917
Ministry of Higher Education	JD	66,585,139	101,193,220	JD	10,091,425	15,336,512	116,529,733
Ministry of Interior	JD	47,125,647	71,619,524	JD	19,178,395	29,146,497	100,766,021
Ministry of Labor	JD	450,000	683,891	JD	114,750	174,392	858,283
Ministry of Planning	JD	174,288,000	264,875,380	JD	46,787,903	71,106,236	335,981,616
Ministry of Public Works and Housing	JD	67,774,812	103,001,234	JD	4,435,261	6,740,518	109,741,752
Greater Amman Municipality	JD	56,619,557	86,047,959	JD	9,625,320	14,628,146	100,676,105
Water Authority	JD	219,362,955	333,378,351	JD	20,404,459	31,009,816	364,388,167
Natural Resources Authority	JD	1,212,001	1,841,947	JD	451,655	686,406	2,528,353
Total	JD US$ DM yen CHF	1,856,862,401 3,747,897,993 356,478 4,641,956,598 98,520	2,821,979,334 3,747,897,993 228,219 32,182,173 76,254	JD US$ DM yen CHF	536,348,922 718,251,081 89,119 672,846,052 33,496	815,119,942 718,251,081 57,054 4,664,767 25,926	3,637,099,276 4,466,149,074 285,273 36,846,940 102,180
Grand Total			6,602,363,972			1,538,118,771	8,140,482,743

* Units of currency are abbreviated as follows: Deutsche mark ("DM"); Japanese yen ("yen"); Jordanian dinar ("JD"); Swiss franc ("CHF"); and United States dollar ("US$").

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PART I

A. PROCEDURAL HISTORY

4. Pursuant to article 16 of the Rules, the Executive Secretary of the Commission reported to the Governing Council the significant factual and legal issues raised by the Claims in report nos. 16, 20, 23 and 24, dated 21 July 1996, 16 July 1997, 2 April 1998 and 8 July 1998, respectively. Those reports were circulated to all Governments and international organizations that filed claims before the Commission and to the Government of Iraq. Pursuant to paragraph 3 of article 16, a number of Governments, including Iraq, submitted their information and views on the reports.

5. In April 1998, after a competitive bidding process, the services of expert consultants in accounting and asset valuation were retained to assist the Panel in the review and analysis of the Claims. As a result of a preliminary review of the Claims, notifications pursuant to article 34 of the Rules ("article 34 notifications") were sent to each Claimant in June and July 1998 seeking additional information or documentation to assist the Panel in verifying and valuing the Claims. A technical mission from the Commission visited Jordan from 23-26 June 1998 to clarify questions relating to the article 34 notifications and arising from the review of the Claims. Documentation and information in response to the article 34 notifications were received in September and October 1998. A second technical mission from the Commission visited Jordan from 4-15 December 1998 to inspect physical assets and examine documentation too voluminous to dispatch to the Commission's headquarters in Geneva. Additional documents and information were requested during the December 1998 visit. The Claimants' responses to those requests were received in January and February 1999. In May 1999, further information and documentation were requested in connection with those Claims relating to the provision of emergency humanitarian relief to evacuees, as defined in paragraphs 29-31. Responses to that request were received in July 1999. All responses to requests for information and documentation have been considered by the Panel.

6. The Claims were submitted to the Panel at its first meeting on 21-23 September 1998. At that meeting the Panel issued procedural orders determining that each of the Claims was "unusually large or complex" within the meaning of article 38(d) of the Rules, and that it would complete its review of the Claims and report its recommendations to the Governing Council within twelve months of 23 September 1998. In reviewing and assessing the Claims, the Panel held regular meetings at the Commission's headquarters.

B. BACKGROUND TO THE CLAIMS

1. The influx of evacuees into Jordan in 1990 and 1991

7. The Claimants assert that approximately 865,000 non-Jordanian individuals who fled from Kuwait or Iraq during the period of Iraq's invasion and occupation of Kuwait ("evacuees") transited the Hashemite Kingdom of Jordan to return to their home countries. 5/

8. In response to this massive human influx into its territory, Jordan provided emergency humanitarian relief, including shelter, food, health care, security and transportation. A number of the Claims seek compensation for the costs of providing such relief to evacuees.

9. The "Report and Recommendations made by the Panel of Commissioners Concerning the First Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' Claims)" 6/ (the "First 'A' Report") described the flight of the evacuees as follows:

> "During the early stages of the exodus from Kuwait and Iraq, border countries are reported to have applied strict controls and procedures, often resulting in departees having to wait for several days before being allowed to enter or depart from the country. Reports note, however, that the large numbers of people and the urgency of the situation made it very difficult for border authorities to apply the usual procedures for entry and departure to every person arriving in or departing from their respective countries when the number of fleeing persons was at its height.
>
> ...
>
> Having reached a point of first arrival, many OECD nationals and Kuwaiti citizens, as well as the more affluent Asian and Arab expatriate workers, were able to secure passage out of Saudi Arabia, Jordan and Iraq by air using their own or Government-provided funds. Because of the unanticipated excess demand, departees often had to wait for several days before they were able to leave. The vast majority of departees, however, arrived destitute with little or no means of returning to their respective countries. Food, shelter, clothing, and medical requirements were met in transit camps established for such purposes by the host Governments, by embassies or consulates, and/or by the international

> organizations involved in co-ordinating the relief effort; as was overland transportation to air, sea and land evacuation points.
>
> The main relief and evacuation activities were concentrated in Jordan. Smaller-scale relief operations also were undertaken in Turkey, Syria, Iran and Iraq. Perhaps half of the 865,000 third country nationals transiting Jordan were Egyptians; others were mostly expatriates from India, Bangladesh, Pakistan, Sri Lanka, the Philippines and Sudan." 7/

2. The influx of returnees into Jordan in 1990 and 1991

10. The Claimants further assert that approximately 300,000 holders of Jordanian passports who lived and worked in Kuwait, Iraq or other Persian Gulf States settled in Jordan as a direct result of Iraq's invasion and occupation of Kuwait. 8/ (Although the exact number of returnees is unclear, to place this figure in context, the Panel notes that estimates of the population of Jordan in 1990 range from approximately 3.2 million to 4.26 million people. 9/) The Claimants refer to these persons as "returnees" and state that a considerable number of them had been residing outside Jordan for more than 10 years and a large percentage of the younger ones had been born abroad. 10/ According to the Claimants, considerable sums were expended to provide relief to and "accommodate" these persons. A number of the Claims relate to the provision of services, including health, social, police, housing, electricity, water and sewerage and education services to them.

11. With respect to these persons, the First "A" Report observed that:

> "The bulk of Jordanian/Palestinian departees left Kuwait and Iraq during the first two months of the crisis. The majority of those who left Kuwait in the first wave of departures did so with minimal outside assistance. People who departed later may have had access to IOM-overland transport facilities ... Approximately 20 per cent of the Jordanian/Palestinian community is reported to have been outside of Kuwait and Iraq when the invasion occurred. Some 317,000 Jordanians and Palestinians were still in Kuwait and Iraq by October 1990. The first wave of Palestinian and Jordanian departures from Kuwait was followed by a second wave which took place after March 1991. The Jordanian Government is reported to have provided relocation assistance" 11/

12. It is apparent that not all of these persons departed Iraq or Kuwait or decided not to return to Iraq or Kuwait during the period 2 August 1990 to 2 March 1991, which is the relevant jurisdictional period under paragraph

34(b) of Governing Council decision 7. 12/ However, the Panel is satisfied that the majority of them did so. For purposes of this report, the Panel will refer to those Jordanians and Palestinians who departed Iraq or Kuwait or who decided not to return to Iraq or Kuwait during the period 2 August 1990 to 2 March 1991 and who settled in Jordan as "returnees".

C. LEGAL FRAMEWORK

1. The Commission's function

13. The Secretary-General of the United Nations, in his report to the Security Council dated 2 May 1991, described the functions of the Commission as follows:

> "The Commission is not a court or an arbitral tribunal before which the parties appear; it is a political organ that performs an essentially fact-finding function of examining claims, verifying their validity, evaluating losses, assessing payments and resolving disputed claims." 13/

14. The Panel has applied relevant and established legal and valuation principles to the assessment, verification, valuation and resolution of the Claims as presented in this report.

15. Three tasks have been entrusted to the Panel in the present proceedings. First, the Panel must determine whether the various types of losses asserted fall within the jurisdiction of the Commission. Second, it must verify whether the asserted losses that are, in principle, compensable have in fact been incurred. Third, it must value those losses found to be compensable and to have been incurred.

16. In carrying out these tasks, the Panel has also given careful consideration to the additional information and views provided by Iraq and other Governments in response to the Executive Secretary's reports circulated pursuant to article 16 of the Rules.

2. Applicable law

17. Article 31 of the Rules provides that:

> "In considering the claims, Commissioners will apply Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law."

3. Liability of Iraq

18. In paragraph 16 of resolution 687 (1991) the Security Council reaffirms that Iraq is liable under international law for any direct loss, damage, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait. 14/ Accordingly, the issue of Iraq's liability for losses falling within the Commission's jurisdiction is resolved. 15/

4. The directness requirement

19. Decision 7 of the Governing Council provides guidance as to the circumstances considered to be directly linked to Iraq's unlawful invasion and occupation of Kuwait. Paragraph 34 provides that direct loss, damage or injury to Governments will include any loss suffered as a result of:

> "(a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;
>
> (b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;
>
> (c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;
>
> (d) The breakdown of civil order in Kuwait or Iraq during that period; or

(e) Hostage-taking or other illegal detention."

20. Governing Council decision 15 states that these five circumstances "are not intended to be exhaustive", and that "[t]here will be other situations where evidence can be produced showing claims are for direct loss, damage or injury as a result of Iraq's unlawful invasion and occupation of Kuwait." 16/ That same decision emphasizes that for any alleged loss, damage or injury to be compensable, "the causal link must be direct". 17/

5. Location of the loss

21. The losses that comprise the Claims are asserted to have been sustained in Jordan. Therefore, the scope of the Commission's competence over losses sustained outside Iraq or Kuwait requires examination. Security Council resolution 687 (1991) does not expressly indicate where a compensable direct loss should have occurred.

22. The Panel finds that there is no jurisdictional bar, in principle, to the award of compensation for losses sustained in Jordan. In that regard, the Panel notes that the "E2" Panel, in its second report, stated that "the place where the loss or damage was suffered by the claimant is not in itself determinative of the Commission's competence". 18/ The Panel further notes that the "E2" Panel, in its first report, observed that "losses suffered outside of Iraq or Kuwait, at a minimum, must also be specifically and closely related to the invasion and occupation Kuwait". 19/ Similarly, the First "C" Report stated that the Commission "has jurisdiction over a claim irrespective of where the loss occurred" but added that "where such losses occurred in Iraq or Kuwait, they can more easily be attributable to Iraqi actions, whereas a claim based on an incident occurring outside of Kuwait or Iraq needs to be more fully substantiated". 20/ During its review of the Claims, the Panel has given careful consideration to this last point.

23. The geographic location of Jordan also assumes importance in determining whether any of the losses asserted in the Claims was sustained as a result of "[m]ilitary operations or threat of military action" within the meaning of paragraph 34(a) of decision 7.

24. During the period from 18 January to 2 March 1991, Iraq launched 40 Scud missile attacks against Israel. Such attacks constitute military operations within the meaning of decision 7. 21/ To reach their targets in Israel, Iraqi Scud missiles traversed Jordanian airspace. Consequently, the Panel finds that from 18 January to 2 March 1991 military operations within the meaning of

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decision 7 took place in Jordanian airspace. Further, the Panel finds that from 15 January 1991 (the expiry of the deadline set by Security Council resolution 678 (1990) for Iraqi forces to withdraw from Kuwait) until 2 March 1991 (the date the cease-fire resolution 22/ came into effect) a threat of military action in Jordanian airspace existed as a result of Iraqi threats against Israel.

25. The Panel notes that military operations did not take place within the land territory of Jordan. Nor was that land territory the subject of an Iraqi threat of military action, even though it was within the range of Iraq's military reach. 23/ The Panel notes, however, that this does not preclude an award of compensation in exceptional situations where military operations in Israel or Iraq could have had effects that spilled over and caused damage in the immediately adjacent land territory of Jordan. 24/

26. The Panel recognizes that disruption of shipping to and from Jordan's port of Aqaba and losses arising from shipping in the Red Sea were a result of the trade embargo and the inspection measures taken to enforce it. Further, the Panel finds that the waters of Jordan and the Red Sea were not the subject of military operations or the threat of military action. 25/

6. Mitigation

27. Paragraph 6 of Governing Council decision 9 provides that "[t]he total amount of compensable losses will be reduced to the extent that those losses could reasonably have been avoided". Paragraph 9 (IV) of Governing Council decision 15 confirms that the duty to mitigate applies to all Claims. In its review and assessment of the Claims, the Panel has been mindful of the duty of the Claimants to take reasonable measures to avoid, diminish or mitigate any direct loss, damage or injury resulting from Iraq's invasion and occupation of Kuwait.

7. Principles of compensability

28. As stated above, many of the Claims relate to Jordan's provision of humanitarian relief to evacuees and returnees. These Claims give rise to a number of common legal issues, which are identified below. In addressing these issues, the Panel has formulated and applied certain principles of compensability, which are set out in paragraphs 28-38, below:

(a) Emergency humanitarian relief to evacuees

29. The Panel finds that evacuees are persons who departed Iraq or Kuwait within the scope of paragraph 34(b) of Governing Council decision 7. Moreover, paragraph 36 thereof provides that compensation is available for, *inter alia*, "relief provided by Governments ... to others - for example to nationals, residents or employees or to others pursuant to contractual obligations - for losses covered by any of the criteria adopted by the Council". These examples are not exhaustive.

30. Jordan mounted a massive humanitarian relief operation to assist evacuees. The Panel finds that expenditures incurred by the Government of Jordan in respect of emergency humanitarian relief provided to evacuees during the period from 2 August 1990 to 2 March 1991 fall within the scope of paragraphs 34(b) and 36 of decision 7 and constitute losses arising as a direct result of Iraq's invasion and occupation of Kuwait, and are therefore, in principle, compensable.

31. The Panel recognizes, however, that there are limitations on the availability of compensation for relief provided to evacuees. One important limitation is the requirement that such expenditures be temporary and extraordinary in nature. 26/ Expenditures not satisfying this requirement do not directly result from Iraq's invasion and occupation of Kuwait.

(b) Humanitarian relief to returnees

32. As stated above, a number of Claimants seek compensation for expenditures incurred in the provision of humanitarian relief to returnees. The periods for which such compensation is claimed extend well beyond 1991, and in some cases to 1996.

33. The Panel finds that returnees are also persons who departed Iraq or Kuwait within the meaning of paragraph 34(b) of Governing Council decision 7 and that the effect of paragraphs 34 and 36 of that decision is to render compensable, in principle, expenditures incurred by the Claimants to provide humanitarian relief to returnees. As is the case with respect to evacuees, the Panel finds that such expenditures must be temporary and extraordinary in nature.

34. Accordingly, expenditures incurred for the provision of humanitarian relief to returnees constitute direct losses that are, in principle, compensable to the extent that they are temporary and extraordinary in nature. 27/

35. Unlike evacuees, who were repatriated to their home countries following relatively brief stays in Jordan, the returnees resettled in Jordan. Therefore, in addition to the period from 2 August 1990 to 2 March 1991, the Panel finds that for a six-month transition period thereafter, i.e., 2 March 1991 to 1 September 1991, expenditures incurred in the provision of humanitarian relief to returnees continued to be temporary and extraordinary in nature and are, in principle, compensable, representing costs that were a direct result of Iraq's invasion and occupation of Kuwait.

36. The Panel finds that this six-month transition period is a reasonable length of time to enable returnees to resettle and recommence a normal life after the tremendous upheaval that they sustained as a result of Iraq's invasion and occupation of Kuwait. The Panel finds that after this six-month transition period, however, the obligation to provide for returnees shifted fully to the Government of Jordan; Government expenditures ceased to be temporary and extraordinary in nature and were not losses directly resulting from Iraq's invasion and occupation of Kuwait.

37. With respect to that portion of capital expenditures which were incurred during the period 2 August 1990 to 1 September 1991, inclusive, and which provided humanitarian relief to returnees during that same period, the Panel deems that such portion is temporary and extraordinary in nature and is therefore compensable. Any portion of such capital expenditures which conferred benefits after 1 September 1991 is not compensable. 28/

c. Intervening acts or decisions

38. Several Claims raise the question of whether an act or decision of the Government of Jordan or of a third party breaks the chain of causation between an asserted loss and Iraq's invasion and occupation of Kuwait, so as to relieve Iraq of liability. The Panel finds that intervening acts or decisions, as a general rule, break the chain of causation and losses resulting therefrom are not compensable. 29/ Under generally accepted principles of law, however, an intervening act or decision that is a direct and foreseeable consequence of Iraq's invasion and occupation of Kuwait does not break the chain of causation.

D. EVIDENTIARY REQUIREMENTS

39. Under article 35(1) of the Rules, "[e]ach claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991)" and it is for the Panel to decide "the admissibility, relevance, materiality and weight of any documents and other evidence submitted".

40. With respect to category "F" claims, in particular, article 35(3) of the Rules requires that "such claims must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss".

41. The evidentiary requirement of article 35(3) of the Rules was included in the category "F" claim form. 30/ The Governing Council had previously emphasized the mandatory nature of this requirement for Governments and international organizations in paragraph 37 of decision 7, which states that "[s]ince these [category "F"] claims will be for substantial amounts, they must be supported by documentary and other appropriate evidence".

42. In addition, the category "F" claim form advised each Claimant to include in its Statement of Claim the following particulars:

(a) The date, type and basis of the Commission's jurisdiction for each element of loss;
(b) The facts supporting the claim;
(c) The legal basis for each element of the claim;
(d) The amount of compensation sought, and an explanation of how this amount was arrived at." 31/

E. VERIFICATION AND VALUATION

1. General evidentiary guidelines

43. With the requirements of article 35 of the Rules in mind, the Panel developed, with the assistance of its expert consultants, evidentiary guidelines that it used to verify and value each Claim. While the Panel reviewed and considered all of the evidence submitted in respect of each Claim, the Panel first looked for primary documentation, such as contracts, audited accounts or invoices. In the absence of such documentation, or where it alone was insufficient to permit verification and valuation of a Claim, the Panel looked for secondary documentation, such as unaudited accounts, payroll records, photographs or independent witness statements. Where such secondary documentation was also insufficient to permit verification and valuation, the Panel considered other appropriate evidence. In all instances where a Claimant had not provided sufficient documentation or other appropriate evidence in support of the claim, requests for such documentation or evidence were made. 32/

44. At the outset of its review of each Claim, the Panel determined whether a Claim was, in principle, compensable. Where a particular Claim was found not to be compensable, the relevant evidence in the Claim was nevertheless examined to determine whether the Claim contained discrete elements that might be compensable.

45. With respect to those Claims or elements thereof that the Panel determined were, in principle, compensable, the Panel proceeded to determine the question of damage sustained by the Claimants, applying the evidentiary requirements of article 35 of the Rules, as described in paragraphs 39-41 above.

46. Under the guidance of the Panel, the expert consultants prepared and presented to the Panel individual reports for each Claim. These reports describe for the Panel the verification and valuation that was undertaken by the expert consultants in respect of each Claim and the results thereof.

2. Verification and valuation of claims for emergency humanitarian relief provided to evacuees

47. With respect to those Claims for expenditures incurred by the Claimants in the provision of emergency humanitarian relief to evacuees, the Panel

determined that, for all such claims, the evidence submitted by the Claimants demonstrated that expenditures were, in fact, incurred for such purposes. However, on the basis of the Claimants' evidence alone, the Panel found that the amount of many of these expenditures could not be fully calculated.

48. The Claimants demonstrated that due to the sheer number of evacuees entering Jordan and the urgent nature of the assistance given to them, expenditures relating to emergency humanitarian relief could not be documented in the usual manner. The Panel recognizes that the types of documentation that would be kept under normal circumstances, and which would typically be submitted as proof of the quantum of claims, likely were not generated given the extraordinary circumstances and the chaos inflicted upon Jordan as a result of the influx of hundreds of thousands of evacuees. The Panel accepts that at that time, the priority for the Government of Jordan was to aid the evacuees, not to maintain records.

49. The Panel is satisfied that significant losses were sustained by the Government of Jordan in its emergency humanitarian relief effort and accepts the Claimants' explanation for the lack of complete documentation in respect thereof. However, the Panel was unable to quantify such losses solely on the evidence provided by the Claimants. Consequently, the Panel assumed an investigative role of its own. Pursuant to article 36 of the Rules, the Panel requested and obtained additional information from international agencies involved in the provision of emergency humanitarian aid in Jordan during the period of Iraq's invasion and occupation of Kuwait. That additional information, together with the evidence submitted by the Claimants, was used by the Panel to quantify the net cost to Jordan of its emergency humanitarian relief effort. In calculating this cost, the Panel deducted from the total cost of the global relief effort made on behalf of the evacuees donations made to Jordan in cash or in kind and costs which the Panel could establish had been borne by other Governments or international agencies.

50. In the course of the Panel's investigation, over 200 documents relating to the evacuee relief effort in Jordan were reviewed. These documents include contemporaneous reports and statements, budgets, cost estimates and miscellaneous correspondence prepared by the United Nations, primarily the Office of the United Nations Disaster Relief Co-ordinator, as well as Governments and other international agencies, which were actively involved in the relief effort in Jordan at the time. Also included in the documents reviewed were reports and budgets from the United Nations High Commissioner for Refugees, the United Nations Children's Fund, the World Food Programme, the World Health Organization, the International Labour Organization, the

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United Nations Relief and Works Agency for Palestine Refugees in the Near East and the Refugee Council. Information relating to the evacuee relief effort in Jordan was also extracted from other category "F" Government claims filed with the Commission.

51. From the data gathered, the Panel calculated both an estimate of the total amount spent in the global emergency humanitarian relief effort for evacuees and an estimate of the total donations made to Jordan in cash or in kind and relevant costs that had been borne by other Governments and/or international organizations. These estimates relate to the following five categories of relief expenditures:

(a) camp preparation;
(b) camp operations, including the provision of food;
(c) health services, excluding the cost of mobile medical stations;
(d) transportation and evacuation; and
(e) miscellaneous costs, including security and administrative services.

52. The Panel finds that the evidence as a whole demonstrates that Jordan incurred total expenditures in the amount of JD 46,243,582 (US$69,854,354) for the provision of emergency humanitarian relief to the evacuees under the five categories. This amount is net of donations made to Jordan and relevant costs borne by other Governments and organizations.

53. The Panel recommends allocation of this total net expenditure on a pro-rata basis among those of the Claimants claiming for humanitarian relief costs falling within the above five categories, which will be discussed more fully in the context of each relevant Claim. This allocation of compensation for emergency humanitarian relief to evacuees is in addition to individual findings and recommendations in respect of other claims made, as discussed within the context of each Claim.

54. The Panel emphasizes that it assumed the investigative role described above because it is satisfied that the Government of Jordan incurred significant expenditures with respect to the emergency humanitarian relief effort for evacuees and accepts the Claimants' explanation for the lack of complete documentation relating thereto. These unique circumstances are not applicable to those claims that are not concerned with emergency humanitarian relief. The Panel has applied the evidentiary guidelines described in paragraphs 43-46 above for those claims.

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F. OTHER ISSUES

1. Currency exchange rate

55. A number of the Claimants have incurred losses or stated their claims in currencies other than United States dollars. As the Commission pays awards in United States dollars, the Panel is required to determine the appropriate rate of exchange. Panels have consistently determined that the currency exchange rate as at the date of loss is the most appropriate method of calculating the applicable exchange rate. 33/

56. The Panel notes that the date a particular loss occurred depends on the circumstances and characteristics of that loss. The claimed losses for which compensation is recommended have been incurred only in Jordanian dinars and United States dollars and the majority of those losses occurred regularly throughout Iraq's invasion and occupation of Kuwait. The Panel therefore determines that with the exception of claims for returnee-related expenditures, the Claim of the Ministry of Tourism and Antiquities, and claims for loss of tangible property, the average exchange rate over the period of Iraq's invasion and occupation of Kuwait, namely, JD 0.662:US$1, is the most appropriate exchange rate to be applied to convert amounts awarded in Jordanian dinars to United States dollars.

57. With respect to those Claims related to the provision of humanitarian relief to returnees, the Panel notes that the compensable period for such claims is 2 August 1990 to 1 September 1991, inclusive. Accordingly, the average exchange rate over this thirteen-month period, namely, JD 0.673:US$1, is the most appropriate exchange rate to be applied to convert amounts awarded in Jordanian dinars to United States dollars.

58. With respect to the Claim of the Ministry of Tourism and Antiquities, the Panel notes that the relevant compensable period is from 2 August 1990 to the end of 1991. Accordingly, the average exchange rate over this seventeen-month period, namely, JD 0.674:US$1, is the most appropriate exchange rate to be applied to convert amounts awarded in Jordanian dinars to United States dollars.

59. With respect to claims for loss of tangible property, the Panel determines that 2 August 1990, the date of the invasion is the date of loss and that the rate of JD 0.658:US$1 is the most appropriate rate to convert amounts awarded in Jordanian dinars to United States dollars.

60. In calculating the average rates of exchange, the Panel has used the exchange rates as reported in the United Nations Monthly Bulletin of Statistics. 34/

2. Interest

61. The Panel notes that each of the Claims includes a claim for compensatory simple interest at the rate of 8.5 per cent. The total amount of interest claimed is US$1,538,118,771. In decision 16 the Governing Council stated that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". 35/ The decision added that "[t]he methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time" and that "[i]nterest will be paid after the principal amount of awards". 36/ Thus, the Panel need only set the date from which interest will run.

62. The Panel considers that because it is not possible to identify the precise date of the occurrence of each of the losses, the mid-point of the period in which the losses occurred is the most appropriate date of loss for the purpose of calculating interest. The Panel finds, therefore, that the mid-point dates of 16 November 1990 and 14 February 1991 are the dates from which interest shall be awarded in respect of compensable claims for evacuee and returnee-related losses, respectively. With respect to the Claim of the Ministry of Tourism and Antiquities, the mid-point is 16 April 1991.

3. Categorization

63. The category "F" claim form used by Governments to submit their claims classifies losses as follows: contract; business transaction or course of dealing; real property; other tangible property; bank accounts and securities; income-producing property; payment or relief to others; evacuation costs (of citizens or other nationals); public service expenditures; environmental damage; depletion of natural resources; and other. 37/ Classification of the Claims was initially made by the Claimants on the claim forms. In some instances, based on its review of the Claimants' assertions and the supporting evidence, the Panel has reclassified all or portions of the Claims.

64. The Panel turns now to its review and assessment of the Claims in the light of the legal framework set out above. The references to amounts asserted by the Claimants are to principal amounts only.

PART II

A. MINISTRY OF SOCIAL DEVELOPMENT (UNCC Claim No. 5000016)

65. The Ministry of Social Development describes its activities as being principally responsible for the planning, administration and operation of social development programmes for the people of Jordan, including the provision of vocational training to the mentally and physically disabled, delinquent youth, the impoverished, and the unemployed.

1. Payment or relief to others

(a) Facts and contentions

66. The Ministry of Social Development claims for the cost of providing returnees with the following humanitarian relief during the period from 2 August 1990 to 30 May 1995: emergency aid to 106 returnee "households" for food, transportation and pocket money; recurrent cash payments to 292 returnee "families" whose income was below the poverty line for necessities such as food, clothing, housing, education and health care; vocational training to 65 "households" addressing the needs of the unemployed and the mentally or physically disabled; physical therapy projects for 25 disabled persons; and care for 119 disabled persons, 533 youths, two elderly persons and nine children. The compensation sought for this relief totals JD 1,891,524. The Ministry contends that the returnees required these social services because they lost their income, other employment benefits and their property in Iraq or Kuwait as a consequence of fleeing Iraq or Kuwait.

(b) Analysis and valuation

67. The Panel finds that the expenditures incurred by the Ministry for humanitarian relief to returnees during the period 2 August 1990 to 1 September 1991, inclusive, constitute temporary and extraordinary expenses that are, in principle, compensable in accordance with the principles of compensability set out in paragraphs 28-38 above.

68. The evidence indicates, however, that most of the claimed costs were incurred after 1 September 1991 and are therefore not compensable. Working from detailed summary schedules provided by the Claimant, the Panel has calculated the costs incurred within the compensable period as follows:

(i) recurrent cash payments to returnee families - JD 3,210;

(ii) care for disabled returnees - JD 148,428;

(iii) care for returnee youth - JD 18,920;

(iv) care for elderly returnees - JD 1,152; and

(v) care for returnee children - JD 8,640.

(c) Recommendation

69. Based on its findings, the Panel recommends an award of JD 180,350 for payment or relief to others.

2. Real property

(a) Facts and contentions

70. The Ministry claims the sum of JD 1,676,000 for costs allegedly incurred during the period from 1 January 1991 to 31 December 1995 to construct six public facilities, including two juvenile centres and two rehabilitation centres, that served returnees. 38/

(b) Analysis and valuation

71. The evidence indicates that most of the alleged construction costs were incurred outside the compensable period in respect of returnees. In accordance with the principles of compensability set out in paragraphs 28-38 above, that portion of the costs is not compensable. With respect to those costs allegedly incurred within the compensable period, the Panel finds that there is insufficient evidence to permit the Panel to verify the claimed costs.

(c) Recommendation

72. Based on its findings, the Panel recommends no award of compensation for real property loss.

3. Public service expenditures

(a) Facts and contentions

73. The Ministry claims that during the period from 1 January 1991 to 31 December 1995 it incurred operating costs in the total amount of JD 5,115,906 for 29 rehabilitation and care centres for returnees.

(b) Analysis and valuation

74. The Panel finds that the period for which compensation is sought extends well beyond the compensable period for the provision of humanitarian relief to returnees. With respect to the costs allegedly incurred within that compensable period, they are based solely on estimates. Despite requests for documentation to support the estimates, none was submitted. As a result, the Panel was unable to verify this portion of the claim.

(c) Recommendation

75. Based on its findings, the Panel recommends no award of compensation for public service expenditures.

4. Summary of recommendations for the Ministry of Social Development

76. Based on the above, the Panel recommends the following amounts of compensation for the Ministry of Social Development:

(1)	Payment or relief to others:	JD 180,350
(2)	Real property:	nil
(3)	Public service expenditures:	nil
	Total	JD 180,350

B. MINISTRY OF SUPPLY (UNCC Claim No. 5000116)

77. The Ministry of Supply describes its activities as encompassing "a vast array of responsibilities related to the welfare of the Jordanian population, including infrastructure, roads, water, supply, telecommunications, municipal services and other public utility functions". The Ministry is also responsible for the costs of subsidizing food prices in order to ensure that basic foodstuffs are available to all Jordanians.

1. Contract

(a) Facts and contentions

78. The Ministry of Supply asserts that it incurred rental fees totalling JD 338,950 for 10 storage silos required to store additional food supplies to feed evacuees and returnees. 39/

79. The Ministry also claims JD 1,129,328 allegedly paid in demurrage costs as a result of delays experienced by 17 vessels transporting wheat, corn and chickens to Jordan that were blocked in the Gulf of Aqaba at various times during the period of Iraq's invasion and occupation of Kuwait. 40/

(b) Analysis and valuation

80. The Panel finds that expenditures for additional storage facilities during the period 2 August 1990 to 1 September 1991, inclusive, are compensable in accordance with the principles of compensability set out in paragraphs 28-38 above.

81. The evidence indicates, however, that some of the rental contracts commenced prior to Iraq's invasion and occupation of Kuwait. The Panel finds that those contracts would have been concluded irrespective of Iraq's invasion and occupation of Kuwait and that the costs thereof are not compensable. Based on its review of the evidence, and, in particular, the rental contracts, the Panel finds that JD 108,833 was incurred in additional rental costs for the period 2 August 1990 to 1 September 1991, inclusive. This amount is calculated based on the rental contracts that commenced and ran during that period. The Panel further finds that no expenditures for storage facilities subsequent to 1 September 1991 are compensable.

82. With respect to the claim for demurrage costs, the Panel finds that losses arising from shipping delays in the Gulf of Aqaba are not compensable as they were a consequence of the trade embargo and the measures taken to enforce it. 41/

(c) Recommendation

83. Based on its findings, the Panel recommends an award of compensation in the amount of JD 108,833 for the costs of additional storage facilities and no award for demurrage costs.

2. Real property

(a) Facts and contentions

84. The Ministry claims for the costs of constructing or enlarging food storage facilities and fuel stations in the amount of JD 23,194,940. The Ministry asserts that such expenditures were necessary because the returnees significantly increased Jordan's population and because Jordan historically imported 70 per cent of its food. 42/ Included in this figure is an amount of US$250,000 for the purchase of electric generators used in bakeries. That amount has been re-categorized as a claim for "Other tangible property".

(b) Analysis and valuation

85. The Panel finds that in accordance with the principles of compensability discussed in paragraphs 28-38 above, the portion of the costs for construction and enlargement of food storage facilities that were incurred within the compensable period for returnees and that provided humanitarian relief to returnees within that same period are, in principle, compensable. However, there is insufficient evidence to verify that any such costs were incurred within the compensable period.

(c) Recommendation

86. Based on its findings, the Panel recommends no award of compensation for real property loss.

3. Other tangible property

(a) Facts and contentions

87. As noted in paragraph 84 above, the Ministry seeks compensation in the amount of US$250,000 for the cost of electric generators used in bakeries.

(b) Analysis and valuation

88. The evidence indicates that the generators were purchased in February 1991 as part of the effort to provide food to returnees. Consequently, the Panel finds that such expenditures provided humanitarian relief to returnees. However, since the purchase of the generators also provided benefits accruing beyond the compensable period for returnee-related expenditures, the Panel awards compensation only for that portion of the value of the generators, representing the temporary and extraordinary benefit derived within the compensable period. 43/ The Panel finds that the compensable amount is JD 22,544.

(c) Recommendation

89. Based on its findings, the Panel recommends an award of compensation in the amount of JD 22,544 for other tangible property.

4. Payment or relief to others

(a) Facts and contentions

90. The Ministry states that it spent JD 1,366,964 in order to provide food without charge to hundreds of thousands of evacuees transiting Jordan. A substantial portion of these costs were incurred in producing and distributing bread. The Ministry also seeks JD 9,085 for the transportation costs of bakeries and JD 4,324 for the overtime wages of bakery workers. 44/

91. Prior to Iraq's invasion and occupation of Kuwait, the Ministry subsidized food prices "to ensure that basic foodstuffs were affordable to all its citizens". The Ministry of Supply asserts that as a result of the massive influx of returnees into Jordan and the negative effects of Iraq's invasion and occupation of Kuwait on the Jordanian economy and on the income of a large part of the population, it was required to increase its food subsidies. The Ministry alleges that in 1990 it paid JD 20,051,001 more than the average amount of subsidies in 1989 and 1991 and seeks compensation for that amount.

(b) Analysis and valuation

92. The Panel finds that the amounts expended for the provision and distribution of food for evacuees are temporary and extraordinary in nature. In accordance with the principles of compensability discussed in paragraphs 29-36 above, such expenditures are, in principle, compensable.

93. The Panel also finds that while the evidence provided by the Ministry is sufficient to demonstrate that expenditures were incurred for the provision and distribution of food to evacuees, it is insufficient to enable the Panel to quantify the amount expended with precision. As discussed in paragraph 49 above, the Panel has obtained additional information pursuant to article 36 of the Rules that enables it to quantify these expenditures within the category of emergency humanitarian relief defined as "camp operations".

94. With respect to the overtime wages component of the Claim, the Ministry acknowledges that it has not paid the bakery workers for the overtime work performed. Therefore, the Panel finds that no loss has been sustained.

95. The Panel finds that although increases in food subsidies to accommodate returnees constitute a form of humanitarian relief to returnees that is temporary and extraordinary in nature during the compensable period for returnees, the evidence does not demonstrate that an increase in food subsidies actually occurred. Therefore, the Panel is unable to verify a loss.

(c) Recommendation

96. Based on the totality of the evidence, including the additional information obtained pursuant to article 36 of the Rules, the Panel recommends an award of compensation in the amount of JD 1,115,307 for expenditures incurred to provide and distribute food to evacuees during the period of Iraq's invasion and occupation of Kuwait. This amount represents the Ministry of Supply's 2.41 per cent pro-rata share of the global amount determined to have been expended by the Government of Jordan on its emergency humanitarian relief effort in respect of evacuees.

97. Based on its findings, the Panel recommends no award of compensation in respect of overtime wages for bakery workers or in respect of increased food subsidies.

5. Summary of recommendations for the Ministry of Supply

98. Based on the above, the Panel recommends the following amounts of compensation for the Ministry of Supply:

(1)	Contract:	JD 108,833
(2)	Real property:	nil
(3)	Other tangible property:	JD 22,544
(4)	Payment or relief to others:	JD 1,115,307
	Total	JD 1,246,684

C. PUBLIC SECURITY DIRECTORATE (UNCC Claim No. 5000117)

99. The Public Security Directorate describes its activities as being responsible for "all those areas commonly understood as police work, including keeping public order, maintaining security and crime control, as well as protecting human life and property and enforcing traffic law".

1. Payment or relief to others

(a) Facts and contentions

100. The Public Security Directorate seeks to recover the costs it allegedly incurred to provide police protection to evacuees and to provide additional services throughout the country as a result of internal security problems created by the presence of vast numbers of evacuees. The Directorate asserts that most evacuees had to travel 700 kilometres from the Jordan-Iraq border to the port of Aqaba and that it established special offices in evacuee centres along that route and at other exit points. Compensation is claimed for the period from 2 August 1990 to 17 March 1991, as follows:

(i) JD 4,500,000 for salaries and equipment of 1,700 regular staff officers re-assigned for this purpose 45/;

(ii) JD 187,500 for aircraft and helicopter patrols searching for evacuees making their way into Jordan over open country;

(iii) JD 562,500 for extraordinary maintenance of vehicles patrolling desert roads;

(iv) JD 2,062,500 for additional fuel and oil to patrol, escort convoys and travel between camps (the Directorate asserts that 471 vehicles were utilized);

(v) JD 360,000 for food and water provided to officers on duty in the desert and working overtime;

(vi) JD 187,500 for additional paper and office materials used to communicate and co-ordinate between more than 200 sub-units and for operations at its centres;

(vii) JD 787,875 for "extra administrative expenses"; and

(viii) JD 2,300,000 for salaries, training and outfitting of approximately 1,800 officers to replace regular staff engaged in protecting evacuees. 46/

b) Analysis and valuation

101. With respect to the costs of salaries and equipment for the aforesaid 1,700 regular officers, the evidence does not demonstrate that they were temporary and extraordinary in nature. The Panel finds that these costs would have been incurred irrespective of Iraq's invasion and occupation of Kuwait. Consequently, they are not compensable.

102. With respect to the other components of the Claim listed in paragraph 100, the Panel finds that the expenditures were temporary and extraordinary in nature and were incurred during the compensable period. In accordance with the principles of compensability discussed in paragraphs 28-38 above, they are, in principle, compensable.

103. The Panel finds that while the evidence provided by the Claimant is sufficient to demonstrate that expenditures were incurred to provide additional security to protect evacuees, it is insufficient to enable the Panel to quantify the amount expended with precision. As discussed in paragraphs 28-38, the Panel has obtained additional information pursuant to article 36 of the Rules that enables it to quantify these expenditures within the category of emergency humanitarian relief defined as "miscellaneous costs, including security and administrative services".

(c) Recommendation

104. Based on its findings, the Panel recommends no award of compensation for the costs of salaries and equipment for the 1,700 officers.

105. Based on the totality of the evidence, including the additional information obtained pursuant to article 36 of the Rules, the Panel recommends an award of compensation in the amount of JD 4,725,134 in respect of the remaining amounts claimed as payment or relief to others. This amount represents the Public Security Directorate's 10.22 per cent pro-rata share of the global amount determined to have been expended by the Government of Jordan on its emergency humanitarian relief effort in respect of evacuees.

2. Real property

(a) Facts and contentions

106. The Directorate asserts that the resettlement of an estimated 400,000 returnees 47/ created an increased demand for police services. It contends that, as a result, it was required to build 16 additional police stations during the period 1991 to 1995, inclusive, at a cost of JD 6,400,000 and to equip them at a further cost of JD 3,971,200. 48/

(b) Analysis and valuation

107. The Panel finds that in accordance with the principles of compensability discussed in paragraphs 28-38 above, the portion of the costs of building and equipping the police stations that were incurred within the compensable period for returnees and that provided humanitarian relief to returnees within that same period are, in principle, compensable. However, there is insufficient evidence to verify that any such costs were incurred within the compensable period.

(c) Recommendation

108. Based on its findings, the Panel recommends no award of compensation for real property loss.

3. Public service expenditures

(a) Facts and contentions

109. The Directorate asserts that as a further consequence of the resettlement of the estimated 400,000 returnees, it was required to recruit and outfit 2,667 additional police officers over a five-year period commencing in mid-1990, at a cost of JD 36,271,200.

(b) Analysis and valuation

110. The evidence indicates that most of the claimed costs were incurred after 1 September 1991, that is, outside the compensable period in respect of returnee-related expenditures. In accordance with the principles of compensability discussed in paragraphs 28-38 above, such costs are not compensable. With respect to the costs allegedly incurred within the compensable period for returnees, the Panel notes that they are based on estimates. Despite requests, the Claimant has not provided documentary support for the estimates and, therefore, the Panel is unable to verify the claimed costs.

(c) Recommendation

111. Based on its findings, the Panel recommends no award of compensation for public service expenditures.

4. Summary of recommendations for the Public Security Directorate

112. Based on the above, the Panel recommends the following amounts of compensation for the Public Security Directorate:

(1)	Payment or relief to others:	JD 4,725,134
(2)	Real property:	nil
(3)	Public service expenditures:	nil
	Total	JD 4,725,134

D. ARMED FORCES (UNCC Claim No. 5000118)

113. The Armed Forces of Jordan include the Army, Navy and Air Force. They describe their activities as having responsibility for "maintaining military readiness and repelling a violation of Jordanian borders that occurs through either overt military action or covert operations by foreign powers".

1. Contract

(a) Shipment of purchased goods

(i) Facts and contentions

114. The Armed Forces seek compensation in the amount of JD 3,342,768 for costs and losses sustained because "[f]oreign manufacturers and shipping agents refused for various periods of [six] to 18 months to fill orders for spare parts and Western Governments delayed and refused to issue export licences to Jordan." The Claimant asserts that prior to the delays, it had already paid for the spare parts.

115. Included in the claimed amount is a claim for damage to shipped goods allegedly caused by mishandling during inspections that took place pursuant to the trade embargo.

(ii) Analysis and valuation

116. The Panel finds that the claimed costs and losses resulted from intervening acts or decisions of third parties, namely foreign Governments in delaying or refusing to grant export licences and by manufacturers and shipping agents in refusing to fill orders. Such acts or decisions break the chain of causation between the asserted loss and Iraq's invasion and occupation of Kuwait. In accordance with the principles of compensability discussed in paragraphs 28-38 above, such losses are not compensable.

117. The Panel further finds that the portion of the Claim alleging damage to goods during inspection procedures to enforce the United Nations trade embargo is not compensable pursuant to Governing Council decision 9.

(iii) Recommendation

118. Based on its findings, the Panel recommends no award of compensation for shipment of purchased goods.

(b) Termination of Mirage contracts

(i) Facts and contentions

119. The Armed Forces assert that they terminated a set of contracts to purchase Mirage fighter jets and associated weaponry because of the financial costs incurred by the Jordanian Government in providing humanitarian relief to evacuees and returnees, the downturn in the Jordanian economy due to Iraq's invasion and occupation of Kuwait and the cost of maintaining military readiness during the period of the invasion and occupation. The Claimant contends that due to these circumstances, it could not meet its contractual payment obligations. The Claimant further maintains that Iraq's invasion and occupation of Kuwait made the suppliers unwilling to continue with the contracts. Compensation was originally sought in the amount of JD 148,931,273 for the costs of termination, which amount includes the forfeited down payment, interest on the loan financing that payment and all progress payments made until the date of termination. In response to an article 34 notification dated 3 June 1998, the Claimant purported to increase the amount of this component of the Claim to JD 166,988,125.

(ii) Analysis and valuation

120. The Panel finds that the Claimant is not permitted to increase the amount of this component of the Claim by way of its response to an article 34 notification. Replies to enquiries by the Commission are a means by which the Claimant may offer additional evidence in support of amounts previously claimed to assist the Panel. However, in providing replies, the Claimant may not increase those claimed amounts or add new loss items to the Claim. Accordingly, review of this component of the Claim was based on the original figure of JD 148,931,273.

121. The Panel finds that the Claimant has failed to demonstrate that asserted costs were a direct result of Iraq's invasion and occupation of Kuwait.

122. The Panel further finds that the claimed costs to some extent also resulted from intervening acts or decisions of both the Government of Jordan and third-party suppliers, the former by terminating the contracts and the latter by their unwillingness to continue with the contracts. These acts or decisions break the chain of causation between the asserted loss and Iraq's invasion and occupation of Kuwait. In accordance with the principles of compensability discussed in paragraphs 28-38 above, the claimed costs are not compensable.

(iii) Recommendation

123. Based on its findings, the Panel recommends no award of compensation for termination of the Mirage contracts.

(c) Suspended modernization

(i) Facts and contentions

124. The Armed Forces assert that as a result of the invasion and occupation of Kuwait, they incurred losses totalling JD 4,402,000 due to the delay in systems improvement programmes undertaken by certain Governments and private foreign manufacturers. According to the Armed Forces, Iraq's "invasion of Kuwait and the subsequent hostage-taking of foreign, primarily Western, persons by the Iraqis triggered the interruption of the upgrade [programmes] and withdrawal of personnel by Western parties. Since [the Claimant] was on schedule with its payments, the only apparent reason for the Western parties' breach of the agreed [programme] lies in the changes and dangers brought about by the Iraqi aggression".

(ii) Analysis and valuation

125. The Panel finds that there is no direct causal link between the delay in systems improvement programmes and Iraq's invasion and occupation of Kuwait. As discussed in paragraph 25 above, the land territory of Jordan was not the subject of military operations or the threat of military action. Consequently, claims relating to the withdrawal of foreign personnel working in Jordan due to fear of "Iraqi aggression" are not compensable.

(iii) Recommendation

126. Based on its findings, the Panel recommends no award of compensation for suspended modernization.

(d) Cancellation of loans

(i) Facts and contentions

127. The Armed Forces allege that the financial strain imposed on Jordan by Iraq's invasion and occupation of Kuwait caused them to default on the repayment obligations under certain loans, whereupon the lead bank cancelled the loans. The Armed Forces assert that Iraq's actions made the lenders unwilling to continue with the loans. According to the Claimant, the loans financed various contracts. Compensation was originally sought in the amount of JD 39,986,041 for extra costs or losses incurred under those contracts upon the cancellation of the loans. In response to an article 34 notification dated 3 June 1998, the Claimant purported to increase the amount of this component of the Claim to JD 41,506,000.

(ii) Analysis and valuation

128. The Panel finds that the Claimant is not permitted to increase the amount of this component of the Claim by way of its response to the article 34 notification for the reason set out in paragraph 120 above. Accordingly, review of this component of the Claim was based on the original figure of JD 39,986,041.

129. The Panel finds that the claimed costs resulted from intervening acts or decisions of both the Government of Jordan and third party lenders, the former by defaulting on its repayment obligations and the latter by cancelling the loans. These acts or decisions break the chain of causation between the asserted loss and Iraq's invasion and occupation of Kuwait. In accordance with the principles of compensability discussed in paragraphs 28-38 above, the claimed costs are not compensable.

(iii) Recommendation

130. Based on its findings, the Panel recommends no award of compensation for the claimed cancellation of loans.

/...

(e) Increased insurance premiums, and shipping and procurement costs

(i) Facts and contentions

131. The Air Force seeks compensation in the amount of JD 284,000 for increased insurance premiums over a two-year period commencing October 1990. It asserts that during this period its insurance premiums increased because of a heightened risk of attack on shipping.

132. The Procurement Division of the Armed Forces claims JD 649,707 as compensation for increased shipping costs and JD 73,687 for increased insurance costs. It offers the same reason as stated in the above paragraph for the increase in insurance premiums, and explains that shipping costs increased due to disruptions to shipping in the Persian Gulf region. The Claimant does not identify the period during which the alleged increased costs were incurred.

133. The Procurement Division of the Armed Forces also asserts that Iraq's invasion and occupation of Kuwait caused an increase in the procurement costs of supplies because of the disruption of trade in that region, delays in granting export licences, currency fluctuations and shortages of goods. The amount of JD 42,262,836 is sought. A specific period of loss is not identified. 49/

(ii) Analysis and valuation

134. With respect to the claims for increased insurance premiums, the Panel finds that increased costs of insurance for transportation of goods in areas subject to military operations or the threat of military action are, in principle, compensable. However, the evidence does not identify the areas through which the goods covered by the insurance were transported. Given that Aqaba is Jordan's only port, it is reasonable to expect that this port was the arrival or departure point for such goods. As discussed in paragraph 26 above, the port of Aqaba and the Red Sea were not the subject of military operations or the threat of military action. In the absence of evidence that goods were transported through compensable areas, the Panel is unable to verify the claimed costs.

135. With respect to the balance of the claims in this section, the Panel finds that the Claimant has failed to demonstrate that the asserted losses were a direct result of Iraq's invasion and occupation of Kuwait.

(iii) Recommendation

136. Based on its findings, the Panel recommends no award of compensation for increased insurance premiums and shipping and procurement costs.

2. Business transaction or course of dealing

(a) Additional spare parts

(i) Facts and contentions

137. The Division of Military Telecommunications asserts that as a result of Iraq's invasion and occupation of Kuwait, its activities increased well above normal levels and it suffered losses as a result of having to purchase additional spare parts at higher prices. The Division asserts that the increase in costs was due to increased insurance costs, devaluation of the Jordanian dinar and increased inflation in the Jordanian economy. The amount of JD 264,808 is sought as compensation for these increased costs.

(ii) Analysis and valuation

138. The Claimant has not specified the activities of the Division of Military Telecommunications for which the additional spare parts were required. In the absence of evidence establishing otherwise, the Panel can only conclude that the spare parts were for the purpose of maintaining Jordan's military readiness. The Armed Forces of Jordan did not form part of the Allied Coalition Forces. At its eighty-first meeting on 30 September 1998, the Governing Council decided that claims for military costs by States that were not members of the Allied Coalition Forces are not compensable. 50/ The Panel finds that costs incurred in maintaining military readiness constitute such military costs and are consequently not compensable.

(iii) Recommendation

139. Based on its findings, the Panel recommends no award of compensation for increased costs of additional spare parts.

(b) Loss of revenues from medical services

(i) Facts and contentions

140. The Medical Services Division of the Armed Forces asserts that it provides medical services to Jordanians and nationals of Persian Gulf States in order to earn revenues. The Division alleges that during the period of Iraq's invasion and occupation of Kuwait, it provided free medical services to evacuees and, as a result, could not utilize its medical services to generate revenues. The Division claims JD 2,564,461 for loss of revenues.

(ii) Analysis and valuation

141. The Panel finds that the evidence fails to demonstrate that a loss of revenues was sustained by the Division during the period of Iraq's invasion and occupation. Although the Claimant did not provide particulars of the revenues earned in 1989 and 1990, the revenues shown for 1991 were not significantly different from what could reasonably be projected given the revenues for 1987 and 1988. Accordingly, the Panel has been unable to verify that the Claimant has suffered a loss.

(iii) Recommendation

142. Based on its findings, the Panel recommends no award of compensation for loss of revenues.

3. Other tangible property

(a) Facts and contentions

143. The Air Force seeks compensation in the amount of JD 10,000,000 for the loss of two jet fighters during patrols over Jordanian airspace during the period of Iraq's invasion and occupation of Kuwait. The Air Force asserts that the threat of hostilities spilling over into Jordan increased the need for patrols and resulted in the loss of the two aircraft.

144. Further, the Air Force asserts that during the period of Iraq's invasion and occupation of Kuwait, it operated its air defences at full capacity, which resulted in the increased consumption of parts, consumables and "bench stock". Compensation was originally sought in the amount of US$2,900,000. However, in

response to an article 34 notification dated 3 June 1998, the Claimant purported to increase the amount of this component of the Claim to US$7,779,946. 51/

(b) Analysis and valuation

145. With respect to increased consumption of parts, consumables and "bench stock", the Panel finds that the Claimant cannot increase the amount claimed by way of its response to the article 34 notification, for the reason set out in paragraph 120 above. Accordingly, review of this component of the Claim was based on the original figure of US$2,900,000.

146. The Panel finds that the amounts claimed for the two jet fighters and for increased consumption of parts, consumables and "bench stock" constitute military costs. As discussed in paragraph 138 above, such costs are not compensable.

(c) Recommendation

147. Based on its findings, the Panel recommends no award of compensation for other tangible property.

4. Payment or relief to others

(a) Reimbursement of compensation payments

(i) Facts and contentions

148. The Armed Forces assert that they mobilized their troops in response to the threat of hostilities spilling over into Jordan as a result of Iraq's invasion and occupation of Kuwait. The Claimant maintains that during the mobilization, 19 officers died and 40 others suffered severe injuries. The Armed Forces seek reimbursement in the amount of JD 1,350,000 for compensation payments made to the wounded soldiers and to the families of the deceased.

(ii) Analysis and valuation

149. The Governing Council decided at its eighty-first meeting on 30 September 1998 52/ that members of non-Allied Coalition Armed Forces may receive compensation only for loss or injury as a consequence of their involvement in military operations resulting from Iraq's invasion of Kuwait if the three conditions set out in Governing Council decision 11 are met. 53/ Decision 11 provides that:

> "... members of the Allied Coalition Armed Forces are not eligible for compensation for loss or injury arising as a consequence of their involvement in Coalition military operations against Iraq, except if the following three conditions are met:
>
> (a) the compensation is awarded in accordance with the general criteria already adopted; and
>
> (b) they were prisoners of war as a consequence of their involvement in Coalition military operations against Iraq in response to its unlawful invasion and occupation of Kuwait; and
>
> (c) the loss or injury resulted from mistreatment in violation of international humanitarian law (including the Geneva Conventions of 1949)."

150. The Panel finds that the compensation payments made by the Jordanian Armed Forces to military personnel or their families do not satisfy the requirements of decision 11 and are therefore not compensable.

(iii) Recommendation

151. Based on its findings, the Panel recommends no award for the reimbursement of compensation payments made by the Armed Forces.

(b) Provision of medical services to evacuees

(i) Facts and contentions

152. The Medical Services Division of the Armed Forces of Jordan asserts that it made available mobile medical stations to provide free medical services to evacuees. The Division seeks the following amounts:

a. JD 346,000 for the personnel and operational costs of the mobile medical stations;

b. JD 2,576,630 for supplies consumed or lost in providing health care services to evacuees; and

c. JD 600,000 for damage to a mobile medical station caused by travel over 200 kilometres of unpaved roads to reach evacuees needing assistance. 54/

(ii) Analysis and valuation

153. The Panel finds that the personnel and operational costs were incurred to provide relief to evacuees during the period 2 August 1990 to 2 March 1991 and that such costs are temporary and extraordinary in nature. In accordance with the principles of compensability discussed in paragraphs 28-38 above, they are compensable.

154. The Panel finds that while the evidence submitted by the Claimant is sufficient to demonstrate that personnel and operational costs were incurred in the provision of medical care to evacuees, it is insufficient to enable the Panel to quantify the costs with precision. The Panel has, however, obtained additional information pursuant to article 36 of the Rules that enables it to quantify these costs within the category of emergency humanitarian relief defined as "health services, excluding the cost of mobile medical stations".

155. With respect to medical supplies consumed or lost, the Medical Services Division provided summaries of the subject supplies together with detailed supporting schedules. As discussed in paragraph 49 above, the Panel has also obtained additional information pursuant to article 36 of the Rules that enables the Panel to quantify this loss within the category of emergency humanitarian relief defined as "health services, excluding the cost of mobile health stations".

156. With respect to the mobile medical station, the evidence shows that it was damaged beyond repair. The Panel calculated the loss by determining the value of the station prior to sustaining the damage and deducting the salvage value. 55/ While the figure arrived at was greater than the amount claimed, the Claimant cannot recover more than the amount claimed.

(iii) Recommendation

157. Based on the totality of the evidence, including the additional information obtained pursuant to article 36 of the Rules, the Panel recommends an award of compensation for provision of medical services to evacuees as follows:

a. JD 2,797,593 for personnel and operational costs and for medical supplies. This amount represents the Armed Forces' 6.05 per cent pro-rata share of the global amount determined to have been expended by the Government of Jordan on its emergency humanitarian relief effort in respect of evacuees.

b. JD 600,000 for the total claimed loss of the mobile medical station.

5. Public service expenditures

(a) Facts and contentions

158. The Armed Forces seek compensation in the amount of JD 323,913,533 for the cost of maintaining adequate military readiness to defend any military incursions into Jordanian territory during the period of Iraq's invasion and occupation of Kuwait. This amount includes the extra costs of wages, patrols, manoeuvres, training, equipment, clothing, spare parts, maintenance and depreciation of equipment. In response to an article 34 notification dated 3 June 1998, the Claimant purported to increase the amount of this component of the Claim to JD 324,697,033.

(b) Analysis and valuation

159. The Panel finds that the Claimant cannot increase the amount claimed by way of its response to the article 34 notification for the reason set out in paragraph 120 above. Accordingly, review of this component of the Claim was based on the original figure of JD 323,913,533.

160. The Panel finds that amounts expended in maintaining Jordan's military readiness are military costs. As discussed in paragraph 138 above, claims for military costs by States that were not members of the Allied Coalition Forces are not compensable.

(c) Recommendation

161. Based on its findings, the Panel recommends no award of compensation for public service expenditures.

6. Other

(a) Training-related losses

(i) Facts and contentions

162. The Air Force claims that it sustained a loss of military pilot training revenues because, first, as a result of Iraq's invasion and occupation of Kuwait, Persian Gulf States could not afford to allocate pilot time or financial resources for training, and second, a difference of opinion between Persian Gulf States and Jordan over Iraq's invasion and occupation led to a cooling of relations between them. The Air Force also asserts that it lost training funds from the Government of the United States because, at the time of Iraq's invasion and occupation of Kuwait, the military resources of the United States were concentrated on Kuwait and the Persian Gulf region. Additionally, the Air Force claims that as a result of Iraq's invasion and occupation of Kuwait, it suffered losses occasioned by foreign Governments, first, terminating contracts under which Air Force personnel were to be trained, second, suspending training courses abroad for Air Force personnel, and third, returning Air Force personnel that were being trained abroad. Compensation was originally sought in the amount of JD 8,595,862 for these training-related losses. In response to an article 34 notification dated 3 June 1998, the Claimant purported to increase the amount of this component of the Claim to JD 43,673,034. The period for which these losses are claimed is not identified.

163. The Military Training Division of the Armed Forces asserts that each year since 1983 the United States sponsored a joint training programme, but that for the years 1991 to 1993, inclusive, sponsorship was suspended because the United States diverted financial resources to finance the military action against Iraq. The amount of JD 1,278,000 is sought as compensation for the loss of sponsorship for those three years.

164. The Military Training Division also seeks compensation in the amount of US$2,436,757 for a reduction in aid provided by the United States to train the Claimant's personnel at American facilities during the years 1991 to 1995, inclusive. 56/ The Division asserts that such reduction occurred because the United States diverted financial resources to finance the military action against Iraq.

165. The Military Training Division also seeks the amount of JD 9,733,540 as compensation for a reduction in revenues from training officers of Persian Gulf States for the period 1991 to 1995, inclusive. The Division asserts that revenues decreased because manpower and financial resources could not be allocated to training due to the high military alert created by the invasion and occupation of Kuwait, and because of the cooling of relations between Jordan and the Persian Gulf States. 57/

(ii) Analysis and valuation

166. The Panel finds that the Armed Forces cannot increase the amount of the Air Force claim for loss of pilot training revenues by way of a response to an article 34 notification for the reason set out in paragraph 120 above. Accordingly, review of this component of the Claim was based on the original figure of JD 8,595,862.

167. The Panel finds that all the claimed training-related losses are the result of intervening acts or decisions of third parties, namely foreign Governments, in reallocating their financial and other resources or in suspending sponsorship of training programmes. Such acts or decisions break the chain of causation between the asserted losses and Iraq's invasion and occupation of Kuwait. In accordance with the principles of compensability discussed in paragraphs 28-38 above, such losses are not compensable.

(iii) Recommendation

168. Based on its findings, the Panel recommends no award of compensation for training-related losses.

(b) Increased insurance costs

(i) Facts and contentions

169. The Supply Services Division of the Armed Forces asserts that airlines imposed a "war tax" on all international airline tickets to cover increased insurance premiums allegedly resulting from Iraq's invasion and occupation of Kuwait. The Division seeks compensation in the amount of JD 17,777 for the "war tax" it paid on airline tickets for Armed Forces personnel. 58/ The Claimant describes the purpose of the flights as follows:

> "The flights were for military personnel on official matters. Included within the official matters are flights by family members accompanying military personnel who will be stationed for more than one year outside of Jordan. The amount claimed for includes war tax on some such flights of family members relocating outside Jordan."

(ii) Analysis and valuation

170. The Panel finds that the extra cost of airline tickets due to increased insurance premiums are, in principle, compensable to the extent that they resulted from actual military operations or the threat of military action. As the Panel has already found in paragraph 24 above, Jordanian airspace was the subject of military operations or the threat of military action from 15 January until 2 March 1990. Although the evidence provided by the Claimant indicates that the flights at issue traversed Jordanian airspace, the evidence is not sufficient to enable the Panel to determine that any of the flights took place within the compensable period. In the absence of the such evidence, the Panel cannot find that the claimed costs are compensable.

(iii) Recommendation

171. Based on its findings, the Panel recommends no award of compensation for additional insurance premiums on airline tickets.

(c) Suspension of foreign aid or sponsorship

(i) Facts and contentions

172. The Air Force asserts that after Iraq's invasion and occupation of Kuwait, Saudi Arabia rescinded previously approved aid for the purchase of a new air defence system. The Claimant further asserts that the United States had approved aid for Jordan to purchase a key part of that defence system, but that after the invasion it refused to grant the required export licence for that system.

173. The Air Force contends that the above losses were a direct result of Iraq's invasion and occupation of Kuwait because donor Governments attempted to save money at the expense of established dealings with the Jordanian Armed Forces in order to finance the military action against Iraq. The export licence was allegedly refused on grounds of national security. Compensation was originally sought in the total amount of US$8,005,625 for the rescission of aid and denial of the export licence. In response to an article 34 notification dated 3 June 1999, the Claimant purported to increase the total amount of these components of the Claim to US$15,738,475.

174. The Military Training Division of the Armed Forces asserts that each year since 1983 the United States had sponsored military construction projects, but that for the years 1991 to 1993, inclusive, the United States suspended sponsorship in order to finance the military action against Iraq. The Division seeks compensation in the amount of JD 639,000 for the loss of sponsorship for those three years.

175. The Planning and Organization Division of the Armed Forces asserts that as a result of Iraq's invasion and occupation of Kuwait, the United States placed a "policy hold" on granting aid to the Jordanian Armed Forces. The Planning and Organization Division seeks JD 18,211,500 as compensation for losses related to the suspension of United States aid from 1 October 1990 to 1993, inclusive. 59/

(ii) Analysis and valuation

176. The Panel finds that the Claimant cannot increase the amount of the Air Force's claimed losses by way of its response to the article 34 notification for the reason set out in paragraph 120 above. Accordingly, review of this component of the Claim was based on the original figure of US$8,005,625.

177. The Panel finds that the claimed suspension of the foreign aid or sponsorship are the result of intervening acts or decisions of third parties, namely foreign Governments, that break the chain of causation between the asserted loss and Iraq's invasion and occupation of Kuwait. In accordance with the principles of compensability discussed in paragraphs 28-38 above, such losses are not compensable.

(iii) Recommendation

178. Based on its findings, the Panel recommends no award of compensation for suspension of foreign aid or sponsorship.

(d) Delay in repair and return of spare parts

(i) Facts and contentions

179. The Armed Forces allege that it sustained losses due to the delay of foreign companies to perform repairs and as a result of certain foreign Governments refusing or delaying the grant of export licences for spare parts sent abroad for repair. According to the Claimant, prior to Iraq's invasion and occupation of Kuwait, licences to export goods to Jordan were granted relatively quickly. However, once the invasion occurred it took four to 12 times longer to obtain such licences. The Claimant asserts that had Iraq not invaded Kuwait, such restrictions by foreign Governments would not have been directed at exports to Jordan. The Claimant originally sought compensation in the amount of JD 8,736,921, for losses allegedly resulting from the delays in the repair and return of spare parts. In response to an article 34 notification dated 3 June 1998, the Claimant purported to increase the amount of this component of the Claim by US$146,637. 60/

(ii) Analysis and valuation

180. The Panel finds that the Claimant is not permitted to increase the amount of this component of the Claim by way of its response to the article 34 notification for the reason set out in paragraph 120 above. Accordingly, review of this component of the Claim was based on the figure of JD 8,736,921.

181. The Panel finds that the losses attributed to delay in the return of the subject parts are the result of intervening acts or decisions of third parties, namely foreign Governments, in delaying the grant of export licences.

Such acts or decisions break the chain of causation between the asserted losses and Iraq's invasion and occupation of Kuwait. In accordance with the principles of compensability discussed in paragraphs 28-38 above, such losses are not compensable.

(iii) Recommendation

182. Based on its findings, the Panel recommends no award of compensation for delay in the repair and return of spare parts.

7. Summary of recommendations for the Armed Forces

183. Based on the above, the Panel recommends the following amounts of compensation for the Armed Forces:

(1)	Contract:	nil
(2)	Business transaction or course of dealing:	nil
(3)	Other tangible property:	nil
(4)	Payment or relief to others:	JD 3,397,593
(5)	Public service expenditures:	nil
(6)	Other:	nil
	Total	JD 3,397,593

E. MINISTRY OF TOURISM AND ANTIQUITIES (UNCC Claim No. 5000119)

184. The Ministry of Tourism and Antiquities describes its activities as including overseeing Government-run tourist sites and "promoting in various world markets tourist travel to and in Jordan".

1. Business transaction or course of dealing

(a) Facts and contentions

185. The Ministry of Tourism and Antiquities asserts that Iraq's invasion and occupation of Kuwait had a negative effect on the tourism industry in Jordan. It seeks compensation in the total amount of JD 87,075 for loss of revenues from entrance fees in 1991 at the sites of Petra, Jerash, Karak, the Museum of Folklore in Amman and the Museum of Madaba. Additional compensation in the amount of JD 706,818 is sought for the loss of revenues from entrance fees at Petra for the period September to December 1990. The total amount claimed is JD 793,893.

186. The Ministry also seeks JD 2,240,000 as compensation for additional advertising and promotion costs that were incurred in 1992 and 1993 to try to restore the number of tourists to pre-invasion levels.

(b) Analysis and valuation

187. The evidence demonstrates that there was a significant decline in the number of tourists visiting Government tourist sites in Jordan commencing in August 1990 and continuing throughout 1991. The Panel finds that such decline was precipitated by the massive influx of evacuees and returnees into Jordan, which overwhelmed Jordan's ability to receive tourists at ports of entry and hindered the ability of tourists to travel within Jordan. While the decision of tourists not to visit Jordan may be considered to be intervening acts or decisions by third parties, they are a direct and foreseeable consequence of Iraq's invasion and occupation of Kuwait and, therefore, do not break the chain of causation between the invasion and the asserted loss.

188. Consequently, the Panel finds that there is a direct causal link between the decline in the number of tourists visiting Government tourist sites in Jordan and Iraq's invasion and occupation of Kuwait. Therefore, the Ministry's asserted loss of revenues from tourist sites is, in principle, compensable.

189. The evidence indicates that the decline in revenues commenced in August 1990 and continued throughout 1991, with recovery commencing in 1992. In the light of this evidence and the seasonal nature of tourism, compensation is granted for the period 2 August 1990 to 31 December 1991, inclusive. The Panel finds that the normal operation of the subject Government-run tourist sites in Jordan was thereafter re-established.

190. With respect to the loss of revenues from entrance fees at Petra for 1990, the Panel notes that the claimed figure of JD 706,818 was incorrectly based on an entrance fee of JD 25 for foreign visitors and JD 1 for Jordanians. Those were the applicable fees from 21 August 1994, whereas the fees during the compensable period were JD 1 and 250 Jordanian fils for foreign and Jordanian visitors, respectively.

191. The Panel adopts the calculations of its expert consultants, who have reviewed the evidence relating to the decrease in the number of tourists and have interviewed the Ministry's representatives. The Panel finds that a loss of revenues from entrance fees in the amount of JD 31,838 was sustained in respect of Petra for the four-month period from 1 September to 31 December 1990 and a further loss of revenues from entrance fees in the amount of JD 84,275 was sustained in 1991 in respect of all of the subject tourist sites. Based on the type of revenues and the fixed nature of the associated costs, the Panel considers that the costs saved due to the decrease in the numbers of tourists would have been minimal.

192. With respect to the claim for increased advertising and promotion costs, the Panel finds that such losses are not compensable because there is no direct causal link with Iraq's invasion and occupation of Kuwait. Further, the costs were incurred in 1992 and 1993, a period too remote in time from the period of Iraq's invasion and occupation.

(c) Recommendation

193. Based on its findings, the Panel recommends an award of compensation in the amount of JD 116,113 for the loss of revenues.

2. Summary of recommendation for the Ministry of Tourism and Antiquities

194. Based on the above, the Panel recommends the following amount of compensation for the Ministry of Tourism and Antiquities:

(1)	Business transaction or course of dealing:	JD 116,113
	Total	JD 116,113

F. CIVIL AVIATION AUTHORITY (UNCC Claim No. 5000260)

195. The Civil Aviation Authority describes its activities as being responsible for the supervision, operation and maintenance of Jordan's civil airports, including negotiating and organizing bilateral air traffic agreements, supervising air safety, and installing and maintaining telecommunications and navigational equipment.

1. Real property

(a) Facts and contentions

196. The Authority seeks compensation for damage occasioned by tens of thousands of evacuees sheltering at the Queen Alia Airport in Amman. According to the Claimant, the average length of stay at the Airport for an evacuee was five days, as opposed to the pre-invasion average of six hours per passenger. The Authority asserts that as a result of prolonged use of the airport facilities by evacuees, sanitary units had to be refurbished at a cost of JD 130,860 and furniture had to be replaced and maintained at a cost of JD 150,000. The Authority claims a further amount of JD 781,000 for damage allegedly caused to 14,000 square metres of floor tiles by a large crane brought inside the airport to repair lamps and air-conditioning damaged by overuse by evacuees.

197. The Authority also asserts that heavy use of the airport by evacuees necessitated expenditures of JD 89,840 on repairs and maintenance of runways, taxiways, aprons and buildings.

(b) Analysis and valuation

198. With respect to the claims for the sanitary units and furniture, the Panel finds that there is sufficient evidence to demonstrate that the claimed losses were suffered as a result of the influx of evacuees and, as such, they are compensable. The Panel calculates the total amount of the loss to be JD 28,000.

199. The Panel finds that there is no evidence to demonstrate that the alleged losses relating to floor tiles and the repair and maintenance of runways, taxiways, aprons and buildings were a result of the influx of evacuees. As a result, they are not compensable.

(c) Recommendation

200. Based on its findings, the Panel recommends an award of compensation in the amount of JD 28,000 for real property loss.

2. Payment or relief to others

(a) Facts and contentions

201. The Authority seeks compensation in the amount of JD 214,300 for the costs of providing certain services, including security, waste disposal, cleaning, social services, water and electricity, to evacuees waiting at the Airport to be repatriated. 61/

(b) Analysis and valuation

202. The Panel finds that these costs were temporary and extraordinary in nature and were rendered during the period 2 August 1990 to 2 March 1991. In accordance with the principles of compensability discussed in paragraphs 28-38 above, they are compensable. Based on the evidence, the Panel calculates the total amount of the loss to be JD 27,636.

(c) Recommendation

203. Based on its findings, the Panel recommends an award of compensation in the amount of JD 27,636 for payment or relief to others.

3. Other

(a) Facts and contentions

204. The Authority asserts that the number of overflights and landings in Jordan decreased as a result of safety concerns on the part of air carriers following Iraq's invasion and occupation of Kuwait. The Authority seeks compensation in the amount of JD 10,476,311 for the loss of revenues from tariffs levied on air carriers overflying Jordan or landing at Queen Alia International Airport for the period 1990 to 1994, inclusive.

205. The Authority also seeks compensation in the amount of JD 209,000 for extra maintenance expenses attributed to increased usage and higher costs of

spare parts, and to increased insurance costs for their shipment, all of which, it asserts, was caused by Iraq's invasion and occupation of Kuwait. The period of time over which the claimed expenses were incurred is not stated.

206. The Authority further asserts that as a result of Iraq's invasion of Kuwait, certain countries that had agreed to have their air traffic personnel trained at the Queen Noor Civil Aviation Technical College could not afford to send students to Jordan, while certain other countries did not send their students, fearing for their safety. The Claimant seeks JD 50,400 as compensation for the revenues it would have normally expected to earn from 1990 to 1992, inclusive. 62/

(b) Analysis and valuation

207. The Panel has already found, in paragraph 24 above, that Jordanian airspace was the subject of military operations or the threat of military action during the period from 15 January until 2 March 1991 as a result of Iraq's threats or military operations against Israel. It follows that loss of revenues due to the decrease in the number of aircraft overflying or landing in Jordan during that period are, in principle, compensable because they resulted directly from such military operations or the threat of military action.

208. Based on an analysis of the revenues of the Authority, the Panel finds that the loss of revenues from overflights and landings during the period 15 January until 2 March 1991, net of saved expenses, amounts to JD 269,780.

209. With respect to that portion of the Claim relating to additional maintenance expenses, the Panel finds the Claimant has failed to demonstrate that the asserted losses were a direct result of Iraq's invasion and occupation of Kuwait.

210. With respect to the claim for loss of training revenues, the Panel finds no evidence of any legally enforceable commitments by the relevant foreign Governments to send trainees to Jordan. Rather, the Claimant had a mere expectation that it would receive training revenues; such an expectation is not compensable.

211. The Panel further finds that any loss of training revenues was the result of intervening acts or decisions of third parties, namely foreign countries, in not sending their trainees to Jordan. Such acts or decisions break the chain of causation between the asserted loss and Iraq's invasion and occupation of Kuwait. In accordance with the principles of compensability discussed in paragraphs 28-38 above, the claimed loss is not compensable.

(c) Recommendation

212. Based on its findings, the Panel recommends an award of compensation in the amount of JD 269,780 for loss of revenues from overflights and landings and no award of compensation for loss of training revenues.

4. Summary of recommendations for the Civil Aviation Authority

213. Based on the above, the Panel recommends the following amounts of compensation for the Civil Aviation Authority:

(1)	Real property:	JD 28,000
(2)	Payment or relief to others:	JD 27,636
(3)	Other:	JD 269,780
	Total	JD 325,416

G. CIVIL DEFENCE GENERAL DIRECTORATE (UNCC Claim No. 5000261)

214. The Civil Defence General Directorate describes its activities as encompassing "a vast array of responsibilities related to civil defence emergencies in Jordan, including fire, disaster and medical emergencies".

1. Real property

(a) Facts and Contentions

215. The Directorate asserts that in 1991 two new civil defence bases were constructed to ensure the provision of emergency services to the expanded population of Jordan resulting from the influx of returnees. The Directorate seeks JD 495,400 as the cost of constructing and equipping these bases. 63/

(b) Analysis and valuation

216. The Panel finds that the supporting documentation indicates that the bases were constructed after 1992, which is outside the compensable period for humanitarian relief to returnees. In accordance with the principles of compensability discussed in paragraphs 28-38 above, the costs of constructing and equipping the two bases are not compensable.

(c) Recommendation

217. Based on its findings, the Panel recommends no award of compensation for real property loss.

2. Other tangible property

(a) Facts and contentions

218. The Directorate seeks compensation in the amount of JD 675,000 for 15 ambulances withdrawn from emergency operation during 1990 to 1991, inclusive, but not replaced "due to a lack of public funds". 64/

(b) Analysis and valuation

219. The Panel finds that the Directorate has failed to demonstrate that the withdrawal of the ambulances was a direct result of Iraq's invasion and occupation of Kuwait. Accordingly, the claim is not compensable.

(c) Recommendation

220. Based on its findings, the Panel recommends no award of compensation for other tangible property loss.

3. Public service expenditures

(a) Facts and Contentions

221. The Directorate asserts that from August 1990 to April 1991, inclusive, it expended considerable resources on emergency measures that were required as a result of the influx of evacuees and the fear that "hostilities would spread to other areas of the Gulf".

222. The Directorate seeks the following compensation 65/:

a. JD 27,100 for "extra salaries and expenses" for 542 instructors in first aid and fire-fighting;

b. JD 159,900 for "extra salaries and expenses" for an unspecified number of professionals and reservists;

c. JD 150,000 for the salaries of an additional 250 full-time staff;

d. JD 50,000 for additional telecommunications costs;

e. JD 160,000 for the expenses of 156,128 volunteers;

f. JD 30,000 for additional equipment and uniforms for personnel;

g. JD 127,680 for fire protection and ambulance services for evacuee camps;

h. JD 50,000 for materials expended in rescue operations, e.g., at road accidents;

i. JD 259,522 for the purchase of a decontamination truck "to protect and rescue the civilian population, if a bomb with poisonous chemicals should be dropped in an area of the Gulf where Jordan would be [a]ffected";

j. JD 50,000 for the cost of gasoline, maintenance and repair of vehicles;

k. JD 40,000 for an information campaign to alert Jordanian citizens of the threats and dangers arising from Iraq's invasion of Kuwait and the responsive measures taken by the Government of Jordan; and

l. JD 300,000 for establishing and stocking first aid centres, evacuation centres, air raid shelters and early emergency warning centres.

223. The Directorate also seeks compensation for the costs of providing emergency services to the expanded population of Jordan resulting from the influx of returnees, as follows:

a. JD 711,600 for recurrent operational and maintenance costs relating to the two civil defence bases, referred to in paragraph 215 above, during the period 1992 to 1995, inclusive;

b. JD 500,000 for the purchase of civil defence vehicles and equipment, two fire engines and an ambulance;

c. JD 38,000 for equipment and uniforms for reservists; and

d. JD 257,000 for training courses, drills and remuneration for volunteers.

(b) Analysis and valuation

224. The Panel has already noted in paragraph 25 above that the land territory of Jordan was not the subject of military operations or a threat of

measures taken by the Claimant in response thereto are not compensable. It follows that the costs claimed at paragraph 222 (i), (k) and (l) are not compensable. With respect to the other claims listed in paragraph 222, the Panel finds that they are compensable evacuee-related expenditures.

225. With respect to these evacuee-related expenditures, the Panel finds that while the documentary evidence submitted by the Directorate is sufficient to demonstrate that some expenditures were incurred, it is insufficient to enable the Panel to quantify the amount expended with precision. As discussed in paragraph 49 above, the Panel has obtained additional information pursuant to article 36 of the Rules that enables it to quantify these expenditures within the category of emergency humanitarian relief defined as "miscellaneous costs, including security and administration".

226. With respect to the costs of providing emergency services as described at paragraph 223, there is insufficient evidence to permit the Panel to verify this portion of the Claim.

(c) Recommendation

227. Based on the totality of the evidence, including the additional information obtained pursuant to article 36 of the Rules, the Panel recommends an award of compensation in the amount of JD 652,204 for compensable evacuee-related expenditures. This amount represents the Civil Defence Directorate's 1.41 per cent pro-rata share of the global amount determined to have been expended by the Government of Jordan on its emergency humanitarian relief effort.

4. Summary of recommendations for Civil Defence General Directorate

228. Based on the above, the Panel recommends the following amounts of compensation for the Civil Defence General Directorate:

(1)	Real property:	nil
(2)	Other tangible property:	nil
(3)	Public service expenditures:	JD 652,204
	Total	JD 652,204

H. ELECTRICITY AUTHORITY (UNCC Claim No. 5000262)

229. The Electricity Authority, an entity of the Jordanian Ministry of Energy and Mineral Resources, describes its activities as being responsible principally for the generation and transmission of electricity throughout Jordan.

1. Public service expenditures

(a) Facts and contentions

230. The Authority asserts that the influx of returnees created demand for an estimated additional 90 MW of electricity, necessitating the following expenditures:

(i) US$46,000,000 for the construction of three 30 MW gasoline turbines put into operation in 1994 and 1995;

(ii) US$35,000,000 for network improvements to facilitate transmission of the additional power and for connection of returnee households to the network; and

(iii) US$26,900,000 for interest accrued as a result of financing the capital expenditures.

231. The Authority also seeks compensation in the amounts of:

(i) US$37,400,000 for the cost of fuel needed to generate the additional 90 MW of power during the period 1992 to 1997, inclusive; and

(ii) US$10,500,000 for operation and maintenance costs relating to the three newly constructed turbines.

(b) Analysis and valuation

232. The Panel finds that the documentary evidence indicates that construction of the turbines and the improvements to the networks took place outside the compensable period for humanitarian relief to returnees

paragraphs 28-38 above, the claimed construction costs and network improvements are not compensable. It follows that interest accrued as a result of the financing of these costs is also not compensable.

233. With respect to the claims for fuel and operation and maintenance costs, the evidence indicates that these claimed costs were incurred after 1 September 1991 and are therefore outside of the compensable period for returnees. Therefore, these claims are not compensable.

(c) Recommendation

234. Based on its findings, the Panel recommends no award of compensation for public service expenditures.

2. Summary of recommendation for the Electricity Authority

235. Based on the above, the Panel recommends the following amount of compensation for the Electricity Authority:

(1) Public service expenditures:	nil
Total	nil

I. MINISTRY OF EDUCATION (UNCC Claim No. 5000263)

236. The Ministry of Education describes its activities as providing primary and secondary education services to the residents of Jordan.

1. Public service expenditures

(a) Facts and contentions

237. The Ministry of Education seeks compensation in the amount of JD 5,800,000 for an alleged increase in capital expenditures during the period 1990 to 1995, inclusive, on sanitary facilities, school desks, blackboards and other equipment, which the Ministry asserts was necessitated by the influx of an estimated 100,000 primary and secondary school returnee students to Jordan.

238. The Ministry seeks compensation in the amount of JD 110,757,450 for increased operating expenditures during the period 1990 to 1995, inclusive, relating to rent, salaries, books, stationery, fuel, electricity, telephone, maintenance and administration which it asserts were also necessitated by the influx of returnee students.

239. The Ministry also seeks compensation in the amount of JD 3,821,850 for the cost of teacher training programmes from 1992 to 1996, inclusive. It asserts that the programmes were required because of the differences in educational background and other problems faced by returnee pupils and because Iraq's invasion and occupation of Kuwait caused the diversion of resources allocated for teacher training in Jordan.

240. The Ministry further seeks compensation for interruption to its education reform programme. The Ministry claims that all of its financial and human resources, including US$73,000,000 from an international development loan intended for its reform programme, were used "to cope with the disruptions of school operations when over 100,000 [returnee] pupils unexpectedly entered the public school system". The full amount of the loan is sought as compensation.

(b) Analysis and valuation

241. With respect to the alleged increase in expenditures on sanitary facilities, school desks and other equipment, the Panel finds that in

above, any portion of such expenditures incurred within the compensable period for returnees and that provided humanitarian relief to returnees within that same period are, in principle, compensable. However, there is insufficient evidence to verify that any such expenditures were incurred within the compensable period.

242. With respect to the increased operating expenses, the Panel finds that to the extent that the alleged expenses were incurred within the compensable period, they are, in principle, compensable. However, the evidence indicates that a significant portion of the amount claimed was incurred after 1 September 1991, which is outside the compensable period for returnees.

243. With respect to the portion of the Claim for increased operating expenses falling within the compensable period, the evidence is insufficient to enable the Panel to verify the amounts expended. Additionally, the evidence fails to establish a correlation between the influx of returnees and the increased expenses. Consequently, the Panel finds that this portion of the Claim is not compensable.

244. The claim concerning teacher training programmes relates to expenditures incurred from 1992 to 1996, which is outside the compensable period for returnee-related losses. Therefore, the Panel finds that the costs of the teacher training programmes are not compensable.

245. The Panel also finds that the reallocation of educational reform funds was an intervening act or decision by the Ministry that breaks the chain of causation between the asserted loss and Iraq's invasion and occupation of Kuwait. In accordance with the principles of compensability discussed in paragraphs 28-38 above, the claim for the development loan amount is not compensable.

(c) Recommendation

246. Based on its findings, the Panel recommends no award of compensation for public service expenditures.

2. Summary of recommendation for the Ministry of Education

247. Based on the above, the Panel recommends the following amount of compensation for the Ministry of Education:

(1)	Public service expenditures:	nil
	Total	nil

J. MINISTRY OF ENERGY AND MINERAL RESOURCES

(UNCC Claim No. 5000264)

248. The Ministry of Energy and Mineral Resources describes its activities as being responsible for providing adequate supplies of energy at the lowest possible cost. It oversees the production and distribution of electricity, oil, petroleum, natural oil and gasoline through several Government agencies, and it monitors the environment for radioactive materials through the Nuclear Energy Directorate.

1. Contract

(a) Facts and contentions

249. The Trans-Arabian Pipeline Company ("Tapline"), a Saudi Arabian company, contracted with the Ministry of Energy and Mineral Resources to deliver oil via pipeline from Saudi Arabia to Jordan. The Ministry alleges that Iraq's invasion and occupation of Kuwait caused Tapline to shut down the pipeline and to suspend oil deliveries in September 1990. Tapline continued to charge the Claimant for the operating expenses of the pipeline. The Ministry states that it is contractually obligated to pay those expenses, although it has not yet done so. It seeks US$63,532,000 as compensation for the operating charges accrued from September 1990 to December 1995, inclusive.

(b) Analysis and valuation

250. In view of the Claimant's admission that the charges for the operating expenses of the pipeline have not been paid, the Panel finds that no loss has been sustained.

(c) Recommendation

251. Based on its findings, the Panel recommends no award of compensation for contract losses.

2. Other tangible property

(a) Facts and contentions

252. The Ministry asserts that subsequent to Iraq's invasion and occupation of Kuwait, the delivery of oil from Iraq and Kuwait by tanker trucks ceased and it was necessary to purchase a shipping tanker to transport oil from sources other than Iraq or Kuwait. The Ministry seeks to recover the purchase cost of the tanker in the amount of US$7,675,000. 66/

(b) Analysis and valuation

253. The Panel finds that Jordan purchased the shipping tanker because restrictions on the importation of oil from Iraq and Kuwait were imposed by the United Nations trade embargo. Pursuant to Governing Council decision 9, losses arising solely from the economic embargo will not be accepted as the basis for compensation. Accordingly, the Panel finds that the purchase cost of the oil tanker is not compensable.

(c) Recommendation

254. Based on its findings, the Panel recommends no award of compensation for other tangible property.

3. Public service expenditures

(a) Facts and contentions

255. The Ministry maintains that during Iraq's invasion and occupation of Kuwait, Iraq fired several missiles at an Israeli nuclear reactor situated close to Jordanian territory. In response to fears of a possible release of radioactive material, the Ministry activated its nuclear and radiological emergency plan. In this regard, the Ministry seeks to recover US$261,500 allegedly expended on overtime wages for employees monitoring the situation, costs of chartering a helicopter and crew to conduct checks for radiation, and costs of environmental sampling in the area bordering the reactor.

256. The Ministry also asserts that because of the missile attacks on the Israeli reactor, a project to establish the Jordanian Centre for Nuclear

Research and Training was suspended for one year, for which compensation is claimed in the total amount of US$238,400.

(b) Analysis and valuation

257. The Panel finds that expenses relating to activation of the nuclear and radiological emergency plan are, in principle, compensable as reasonable precautionary and preventative measures to protect against a potential spillover effect from Iraq's military operations against the Israeli nuclear reactor. However, the evidence is insufficient to enable the Panel to verify the claim.

258. The Panel further finds that the Claimant has failed to demonstrate that suspension of the project to establish the Centre for Nuclear Research and Training was a direct result of Iraq's invasion and occupation of Kuwait. Consequently, losses arising from such suspension are not compensable.

(c) Recommendation

259. Based on the above, the Panel recommends no award of compensation for public service expenditures.

4. Other

(a) Facts and contentions

260. The Ministry asserts that since 1986 it had been the recipient of "annual oil grants" from Kuwait, which it contends were suspended immediately after Iraq's invasion of Kuwait and were never resumed. The amount of US$295,270,115 is claimed as the value of the lost grants for the period of August 1990 to December 1994, inclusive.

261. The Ministry also asserts that as a result of and during Iraq's invasion and occupation of Kuwait it paid higher prices for oil and oil products. In this respect, it seeks compensation in the amount of US$32,308,929. 67/

(b) Analysis and valuation

262. With respect to the Kuwaiti oil grants, there is no evidence of a legally enforceable commitment by Kuwait to supply oil to Jordan. Rather, the

Claimant had a mere expectation that it would continue to receive oil grants; such expectation is not compensable.

263. The Panel further finds that Kuwait was unable to deliver oil or oil products during the period of Iraq's invasion and occupation. Upon liberation, the decision of the Government of Kuwait not to resume the grants constitutes an intervening act or decision of a third party that breaks the chain of causation between the asserted loss and Iraq's invasion and occupation of Kuwait. In accordance with the principles of compensability discussed in paragraphs 28-38 above, the loss of the grants is not compensable.

264. With respect to the balance of this component of the Claim, the Panel finds that increases in the price of oil and oil products are attributable to market forces and oil industry practices rather than to Iraq's invasion and occupation of Kuwait. Consequently, the claimed amount is not compensable.

(c) Recommendation

265. Based on its findings, the Panel recommends no award of compensation for loss of oil grants and the increased price of oil.

5. Summary of recommendations for the Ministry of Energy and Mineral Resources

266. Based on the above, the Panel recommends the following amounts of compensation for the Ministry of Energy and Mineral Resources:

(1)	Contract:	nil
(2)	Other tangible property:	nil
(3)	Public service expenditures:	nil
(4)	Other:	nil
	Total	nil

K. MINISTRY OF FINANCE (UNCC Claim No. 5000265)

267. The Ministry of Finance describes its activities as being principally responsible for the Government's budgetary, monetary and fiscal policies.

1. Payment or relief to others

(a) Facts and contentions

268. The Ministry of Finance alleges that it waived collection of customs duties in the estimated amount of JD 308,456,036 relating to the importation of 14,252 motor vehicles belonging to returnees, and similarly waived duties on the furniture of 48,998 returnee families in the estimated amount of JD 24,499,000. The Ministry explains that the returnees, due to their unplanned return to Jordan, could not afford to pay the duties. The Ministry asserts that it considered the waiver as a form of relief to the returnees.

(b) Analysis and valuation

269. The Panel finds that the waiver constitutes an intervening act or decision by the Ministry to forego revenues that breaks the causal link between the alleged loss and Iraq's invasion and occupation of Kuwait. In accordance with the principles of compensability discussed in paragraphs 28-38 above, the loss of customs duties is not compensable.

(c) Recommendation

270. Based on its findings, the Panel recommends no award of compensation for payment or relief to others.

2. Other

(a) Facts and contentions

271. The Ministry seeks reimbursement in the amounts of JD 30,415 and US$1,582,495 for the preparation costs of the category "E" and "F" claims filed with the Commission on 22 December 1995 by ministries or entities of the Government of Jordan. These costs include the fees of legal advisors and administrative expenses.

/...

272. The Ministry also seeks reimbursement of the amounts of 4,641,956,598 Japanese yen, US$2,665,738, 98,520 Swiss francs and 356,478 Deutsche mark, being the interest paid from 1991 to 1995, inclusive, on loans taken out to cover the budgetary shortfall caused by the revocation of grants from Persian Gulf states and the general deterioration of the Jordanian economy due to the Gulf crisis. The Ministry also attributes the shortfall in the budget to the cost of assisting returnees, the loss of remittances sent by returnees working abroad and the decline in regional trade and tourism during Iraq's invasion and occupation of Kuwait. 68/

273. The Ministry further asserts that "[s]trained relations between Jordan and the Gulf Cooperation Council (GCC) States with the commencement of the Gulf Crisis prompted the freezing of foreign economic assistance to Jordan." It is alleged that between 1979 and 1990, Jordan had received annual aid totalling US$600 million per year from Arab states and that all such aid ceased in August 1990. The Ministry seeks compensation in the amount of US$3,005,000,000 as the value of lost aid from 1990 to 1995. 69/

(b) Analysis and valuation

274. In a letter dated 7 September 1997, the Chairman of the Panel was notified by the Executive Secretary of the Commission that the Governing Council intended to resolve the issue of claims preparation costs at a future date. Pursuant to the letter from the Executive Secretary, the Panel takes no action with respect to the claim of the Ministry of Finance for claim preparation costs.

275. With respect to the claim for reimbursement of interest paid, the Panel finds that the Claimant has failed to demonstrate that the claimed loss was a direct result of Iraq's invasion and occupation of Kuwait. Consequently, the claim is not compensable.

276. With respect to the loss of aid, the Panel finds no evidence of a legally enforceable right to the aid. Rather, the Claimant had a mere expectation that it would continue to receive aid; such an expectation is not compensable.

277. The Panel also finds that the loss of aid is the result of intervening acts or decisions of third parties, namely foreign Governments. These acts or decisions break the chain of causation between the asserted loss and Iraq's invasion and occupation of Kuwait. In accordance with the principles of

compensability discussed in paragraphs 28-38 above, such losses are not compensable.

(c) Recommendation

278. Based on its findings, the Panel takes no action in respect of claims preparation costs and recommends no award of compensation for the reimbursement of interest or for loss of aid claims.

3. Summary of recommendations for the Ministry of Finance

279. Based on the above, the Panel recommends the following amounts of compensation for the Ministry of Finance:

(1)	Payment or relief to others:	nil
(2)	Other:	nil
	Total	nil

L. MINISTRY OF HEALTH (UNCC Claim No. 5000266)

280. The Ministry of Health describes its activities as having overall responsibility for the health of the population. It provides preventative, curative and pharmaceutical services, sets health policy, develops health legislation and oversees the medical profession.

1. Payment or relief to others

(a) Facts and contentions

281. The Ministry of Health asserts that it provided health care to evacuees during the period of Iraq's invasion and occupation, at a cost of US$9,819,000. These costs were incurred in establishing and equipping evacuee camp health facilities, paying salaries of medical personnel, and providing other services such as administration and hospitalization.

282. The Ministry also alleges that it took measures to control the possible outbreak of epidemics in areas where evacuees lacked clean water and sewage disposal and seeks compensation for the cost of such measures in the amount of JD 261,000. 70/

(b) Analysis and valuation

283. The Panel finds that the claimed health care costs and the costs of epidemic control were incurred to provide emergency humanitarian relief to evacuees between the period 2 August 1990 to 2 March 1991 and that they are temporary and extraordinary in nature. In accordance with the principles of compensability discussed in paragraphs 28-38 above, they are compensable.

284. The Panel also finds that while the evidence submitted by the Ministry is sufficient to demonstrate that expenditures were incurred for these purposes, it is insufficient to enable the Panel to quantify the amount expended with precision. As discussed in paragraph 49 above, the Panel has, however, obtained additional information pursuant to article 36 of the Rules that enables it to quantify these expenditures within the category of emergency humanitarian relief defined as "health services, excluding the cost of mobile medical stations".

(c) Recommendation

285. Based on the totality of the evidence, including additional information obtained pursuant to article 36 of the Rules, the Panel recommends an award of compensation in the amount of JD 4,858,416 for evacuee-related health care and epidemic control. This amount represents the Ministry of Health's 10.51 per cent pro-rata share of the global amount determined to have been expended by the Government of Jordan on its emergency humanitarian relief effort.

2. Public service expenditures

(a) Facts and contentions

286. The Ministry of Health seeks compensation in the amount of US$100,744,852 for amounts expended in providing health care to returnees from 1991 to 1995, inclusive. The claim relates primarily to the establishment and operation of 53 new health centres and 210 hospital beds, and is estimated on the premise that 350,000 returnees resettled in Jordan.

(b) Analysis and valuation

287. The Panel notes that the period for which compensation is claimed extends well beyond the compensable period for returnees. In accordance with the principles of compensability set out in paragraphs 28-38 above, that portion of the costs allegedly incurred outside that period is not compensable. With respect to those costs allegedly incurred within the compensable period, the Panel finds that there is insufficient evidence to permit the Panel to verify the claimed costs.

(c) Recommendation

288. Based on its findings, the Panel recommends no award of compensation for public service expenditures.

3. Summary of recommendations for the Ministry of Health

289. Based on the above, the Panel recommends the following amounts of compensation for the Ministry of Health:

(1)	Payment or relief to others:	JD 4,858,416
(2)	Public service expenditures:	nil
	Total	JD 4,858,416

M. MINISTRY OF HIGHER EDUCATION (UNCC Claim No. 5000267)

290. The Ministry of Higher Education describes its activities as providing higher education services to the residents of Jordan at its public community colleges and universities.

1. Real property

(a) Facts and contentions

291. The Ministry seeks to recover the cost of constructing the Hashemite University at Al-Zarka, namely JD 21,400,547, which amount it claims represents "losses in the quality of higher education facilities by the claimant from 1991-1994". The Ministry asserts that "[t]his loss was suffered under the double strain of the increase in student population and lack of finances to meet the increased need for classrooms and facilities absolutely necessary for a modern university education."

292. The Ministry also claims compensation for all of its capital expenditures on construction and maintenance of community college buildings and equipment for the period 1991 to 1995, inclusive, amounting to JD 4,004,392. The Ministry asserts that this amount represents the reduction in its budget resulting from Iraq's invasion and occupation of Kuwait and extra costs it incurred as a result of increased student enrolments resulting from the influx of returnees. 71/

(b) Analysis and valuation

293. The Panel finds that most of the claimed costs were incurred outside the compensable period for returnee-related expenditures. In accordance with the principles of compensability discussed in paragraphs 28-38 above, such losses are not compensable. With respect to those costs allegedly incurred within the compensable period for returnees, there is insufficient evidence to permit the Panel to verify these costs.

(c) Recommendation

294. Based on the above, the Panel recommends no award of compensation for real property loss.

2. Public service expenditures

(a) Facts and contentions

295. The Ministry asserts that it incurred increased costs in having to subsidize the education of returnee students attending Jordanian universities and community colleges for the years 1991 to 1996, inclusive, at a cost of JD 31,080,000. The Ministry seeks recovery of these costs.

296. The Ministry also seeks the amount of JD 145,200, which it asserts was expended to provide scholarships to returnee students for the academic years 1990/1991 to 1996/1997, inclusive. 72/

297. The Ministry further contends that the Government of Jordan faced budgetary problems as a result of Iraq's invasion and occupation of Kuwait and that these financial difficulties forced the Government to reduce grants to universities and community colleges for the period 1991 to 1995, inclusive, by an amount of JD 9,955,000.

(b) Analysis and valuation

298. As set out in paragraphs 28-38 above, the Panel has found that costs expended in respect of temporary and extraordinary relief to returnees during the period 2 August 1990 to 1 September 1991, inclusive, are, in principle, compensable.

299. The evidence indicates that there was a significant increase in the number of university students in the academic year 1990/1991. However, the evidence does not demonstrate any corresponding increase in recurrent expenditures for education during the academic year 1990/1991. With respect to community college students, the evidence indicates that the increase in the number of students between the academic years 1989/1990 and 1990/1991 was not significantly higher than the increase between 1988/1989 and 1989/1990. The Panel, therefore, finds that the Claimant has failed to demonstrate a sufficient basis for its assertion that it incurred increased costs in subsidizing the education of university or college student returnees.

300. With respect to scholarships, the evidence indicates that the number of scholarships awarded did not increase following Iraq's invasion of Kuwait. The Claimant simply increased the proportion of scholarships it awarded to

students normally resident outside Jordan. The Panel accordingly finds that no loss was sustained by the Claimant.

301. The Panel finds that the loss attributed to the decreased grants to universities and community colleges is the result of intervening acts or decisions of the Government of Jordan to decrease those grants. Such acts or decisions break the chain of causation between the asserted loss and Iraq's invasion and occupation of Kuwait. In accordance with the principles of compensability discussed in paragraphs 28-38 above, such loss is not compensable.

(c) Recommendation

302. Based on its findings, the Panel recommends no award of compensation for public service expenditures.

3. Summary of recommendations for the Ministry of Higher Education

303. Based on the above, the Panel recommends the following amounts of compensation for the Ministry of Higher Education:

(1)	Real property:	nil
(2)	Public service expenditures:	nil
	Total	nil

N. MINISTRY OF INTERIOR (UNCC Claim No. 5000268)

304. The Ministry of Interior describes its activities as including "a vast array of responsibilities related to the welfare of the Jordanian population".

1. Payment or relief to others

(a) Facts and contentions

305. The Ministry of Interior claims compensation for numerous expenses allegedly incurred as a result of providing relief to the evacuees. These expenses include:

(i) the provision of food, tents, health care and medicines to evacuees;
(ii) the transportation of evacuees by land and sea (and by air in certain emergency situations, for instance, where evacuees suffered heart attacks);
(iii) the construction of temporary camps;
(iv) the maintenance costs of the airport and seaport facilities used to repatriate evacuees; and
(v) the "upgrading of service and administrative support facilities".

306. The Ministry seeks compensation for the above in the total amount of JD 47,125,647. Further, the Ministry maintains that none of the above costs was paid or reimbursed by foreign Governments or international agencies. 73/

(b) Analysis and valuation

307. The Panel finds that the claimed expenses were incurred to provide emergency humanitarian relief to evacuees between the period 2 August 1990 to 2 March 1991 and that they were temporary and extraordinary in nature. In accordance with the principles of compensability discussed in paragraphs 28-38 above, they are compensable.

308. The Panel further finds that while the documentary evidence submitted by the Ministry is sufficient to demonstrate that expenditures were incurred to provide relief to evacuees, it is insufficient to enable the Panel to quantify the amount expended with precision. As discussed in paragraph 49 above, the Panel has obtained additional information pursuant to article 36 of the Rules

that enables it to quantify these expenditures within all five categories of emergency humanitarian relief as set out in paragraph 51 above.

(c) Recommendation

309. Based on the totality of the evidence, including the additional information obtained pursuant to article 36 of the Rules, the Panel recommends an award of compensation in the amount of JD 32,094,928 for evacuee-related expenditures. This amount represents the Ministry of Interior's 69.40 per cent pro-rata share of the global amount determined to have been expended by the Government of Jordan on the emergency humanitarian relief effort.

2. Summary of recommendation for the Ministry of Interior

310. Based on the above, the Panel recommends the following amount of compensation for the Ministry of Interior:

(1) Payment or relief to others:	JD 32,094,928
Total	JD 32,094,928

O. MINISTRY OF LABOR (UNCC Claim No. 5000269)

311. The Ministry of Labor describes its activities as being responsible for regulating the labour sector and providing "labour-related services" in Jordan.

1. Other

(a) Facts and contentions

312. The Ministry of Labor seeks compensation in the amount of JD 450,000 for the costs of assisting Jordanians to file their claims with the Commission and for the operational costs of a national compensation commission established for this purpose. 74/ The Claimant asserts that its Claim does not relate to the costs sought by the Ministry of Finance for the preparation of the category "E" and "F" claims filed by ministries and entities of the Government of Jordan.

(b) Analysis and valuation

313. The Panel notes that paragraph I.1 of Governing Council decision 18 provides that:

> "Governments may offset their costs of processing claims by deducting a small fee from payments made to claimants ... Such fees shall be commensurate with the actual expenditure of Governments. In the case of awards payable to claimants in categories "A", "B" and "C", the fees should not exceed 1.5 per cent, and for awards payable to claimants in categories "D", "E" and "F", the fees should not exceed 3 per cent." 75/

314. The Panel finds that the Governing Council intended these fees to provide adequate recompense for claim processing costs. The Panel finds that the asserted costs of the Ministry of Labor constitute claim processing costs and, as such, are not compensable except by way of the fees provided for in decision 18. 76/

(c) Recommendation

315. Based on its findings, the Panel recommends no award of compensation for the Ministry of Labor.

/...

2. Summary of recommendation for Ministry of Labor

316. Based on the above, the Panel recommends the following amount of compensation for the Ministry of Labor.

(1)	Other:	nil
	Total	nil

P. MINISTRY OF PLANNING (UNCC Claim No. 5000270)

317. The Ministry of Planning describes its activities as including "a vast array of responsibilities related to the welfare of the Jordanian population, including infrastructure, roads, water, supply, telecommunications, municipal services and other public utility functions".

1. Public service expenditures

(a) Facts and contentions

318. The Ministry of Planning seeks compensation in the amount of JD 1,132,200 for interest revenue losses allegedly sustained by the Central Bank of Jordan in making low interest loans for Government housing projects for returnees.

319. The Ministry also asserts that the influx of returnees necessitated expenditures to create job opportunities during the years 1991 to 1994, inclusive. It estimated that some 59,000 jobs had to be created to employ returnees. The amount claimed is JD 174,288,000. The Ministry maintains that this Claim does not overlap with those submitted by other ministries or entities of the Jordanian Government.

(b) Analysis and valuation

320. The Claim as originally submitted consisted of two components: "housing construction and external infrastructure" (JD 64,190,000) and "job creation" (JD 582,400,000). In its responses to an article 34 notification dated 3 June 1998, the Claimant reduced the amount claimed for the second component to JD 174,288,000. The first component was described as "limited to the increased costs of external infrastructure attendant to the construction of additional housing for returnee families as a result of the Gulf Crisis". Housing construction and external infrastructure costs in the amount of JD 64,190,000 were identified as including, inter alia, roads, pavements, retaining walls, design costs, utility hook-up costs and interest charges on loans secured to fund these costs. In response to the article 34 notification, the Claimant also stated that in fact it had not borne the costs of housing construction and external infrastructure. Accordingly, the Panel does not need to review this claim.

321. In that same article 34 response, the Claimant introduced a claim in the amount of JD 1,132,200 for "compensation for revenue losses incurred through providing low-interest loans to returnees" who purchased the housing units.

322. The Panel finds that the claim for interest revenue losses constitutes a new claim. The introduction of such a new claim is not permitted by way of a response to an article 34 notification for the reasons set out in paragraph 120 above.

323. Even assuming that the new claim were permitted, the Panel notes that the evidence indicates that the majority if not all of the claimed revenue losses were sustained outside the compensable period for returnee-related expenditures.

324. With respect to the second component of the Claim, the Panel finds that expenditures to create employment opportunities for returnees are not temporary or extraordinary in nature. In accordance with the principles of compensability set out in paragraphs 28-38 above, they are not compensable.

(c) Recommendation

325. Based on its findings, the Panel recommends no award of compensation for public service expenditures.

2. Summary of recommendation for Ministry of Planning

326. Based on the above, the Panel recommends the following amount of compensation for the Ministry of Planning:

(1)	Public service expenditures:	nil
	Total	nil

Q. MINISTRY OF PUBLIC WORKS AND HOUSING (UNCC Claim No. 5000271)

327. The Ministry of Public Works and Housing describes its activities as including "a vast array of responsibilities related to roads and highway infrastructure in Jordan".

1. Contract

(a) Facts and contentions

328. A road project in Jordan undertaken by a foreign company was apparently abandoned in August 1990 due to the company's fear for the safety of its construction crew during Iraq's invasion and occupation of Kuwait. The project was left substantially unperformed. An amount of JD 4,914,736, being the difference between the original contract price of the project and the amounts paid to subsequent contractors to complete the foreign company's unperformed work, is claimed as compensation. However, this amount appears to be an arithmetical error since the component items total JD 4,909,736.

(b) Analysis and valuation

329. The Panel has already noted, in paragraph 25 above, that the land territory of Jordan was not the subject of military operations or the threat of military action. Accordingly, losses arising from the abandonment of the road project because of safety concerns are not compensable. Furthermore, the evidence before the Panel does not indicate that the project was located in an area in which there could have been a potential spillover effect from military operations in Israel or Iraq.

(c) Recommendation

330. Based on its findings, the Panel recommends no award of compensation for contract losses.

2. Public service expenditures

(a) Facts and contentions

331. The Ministry is seeking compensation in the amount of JD 62,865,076 for the maintenance and repair costs of roads for the period 1991 to 1996, inclusive. The Ministry contends that certain roads in Jordan suffered considerable damage from the movement of over a million evacuees and returnees.

(b) Analysis and valuation

332. The Panel finds that, in principle, damage to roads resulting from their use by evacuees and returnees during the compensable time periods set out in the principles of compensability discussed in paragraphs 28-38 above, are compensable. However, the evidence does not demonstrate that damage was caused as a result of the movement of evacuees and returnees. Rather, the evidence indicates that the roads were in poor condition prior to Iraq's invasion and occupation of Kuwait.

(c) Recommendation

333. Based on its findings, the Panel recommends no award of compensation for public service expenditures.

3. Summary of recommendations for the Ministry of Public Works and Housing

334. Based on the above, the Panel recommends the following amounts of compensation for the Ministry of Public Works and Housing:

(1)	Contract:	nil
(2)	Public service expenditures:	nil
	Total	nil

R. GREATER AMMAN MUNICIPALITY (UNCC Claim No. 5000272)

335. The Greater Amman Municipality describes its activities as including "a vast array of responsibilities related to municipal services in Amman".

1. Public service expenditures

(a) Facts and contentions

336. The Greater Amman Municipality contends that as a consequence of the permanent settlement of a large proportion of returnees in Amman, the population of Amman increased by 123,650 people in 1990 whereas prior thereto the average annual increase was approximately 40,000 people. The Municipality asserts that more municipal services were required, at an increased cost to the Municipality. These included the costs of traffic planning, construction of pavements and road repair. The Municipality seeks compensation in the amount of JD 56,619,557, being the difference between the amount of expenditures in the, periods 1986 to 1990 inclusive and 1991 to 1995 inclusive. 77/

(b) Analysis and valuation

337. The Panel finds that in accordance with the principles of compensability discussed in paragraphs 28-38 above, the portion of the claimed costs that were incurred within the compensable period for returnees and that provided humanitarian relief to returnees within that same period are, in principle, compensable. However, there is insufficient evidence to verify that any such costs were incurred within the compensable period.

(c) Recommendation

338. Based on its findings, the Panel recommends no award of compensation for public service expenditures.

2. Summary of recommendation for the Greater Amman Municipality

339. Based on the above, the Panel recommends the following amount of compensation for the Greater Amman Municipality:

(1)	Public service expenditures:	nil
	Total	nil

S. WATER AUTHORITY (UNCC Claim No. 5000274)

340. The Water Authority is an autonomous public department which describes its activities as encompassing "a vast array of responsibilities related to water and sewerage and related activities in Jordan".

1. Public service expenditures

(a) Facts and contentions

341. The Authority maintains that the influx of returnees necessitated rehabilitation and expansion of its water supply and sewerage networks at a cost of JD 152,001,870. The period for which that amount is claimed is not identified. However, the amount includes a number of projects that commenced between 1990 and 1995. Some of these projects were completed in 1997.

342. The Authority also seeks the amount of JD 16,038,000, which it contends represents additional operating expenses incurred during the period 1990 to 1994, inclusive, as a result of the influx of returnees.

343. The Authority further asserts that the additional demand for water created by the influx of returnees compelled it to consider exploiting Jordan's last known water reserve, the Al-Disi Aquifer, ten years earlier than projected. Compensation is sought in the amount of JD 700,000 for a feasibility study undertaken on the supply of additional water from this reserve.

(b) Analysis and valuation

344. The Panel finds that the evidence indicates that expenditures for rehabilitation and expansion of the Authority's water supply and sewerage networks were incurred outside the compensable period for returnees. Consequently, in accordance with the principles of compensability discussed in paragraphs 28-38 above, these expenditures are not compensable.

345. Increased operating costs attributable to the influx of returnees are temporary and extraordinary in nature for the duration of the compensable period for returnee-related expenditures. In accordance with the principles of compensability set out in paragraphs 28-38 above, such expenditures are, in principle, compensable.

346. The evidence indicates that operating costs increased between 1990 and 1991. The Claimant acknowledges that no fees for service were collected from the returnees. The Panel finds that the decision of the Claimant not to charge returnees for water and sewerage services constitutes a form of humanitarian relief that is temporary and extraordinary in nature during the compensable period in respect of returnees. However, the evidence is insufficient to permit the Panel to value the claimed loss.

347. The evidence indicates that the study concerning the water reserve commenced in August 1995, outside the compensable period in respect of returnee-related expenditures. In accordance with the principles of compensability discussed in paragraphs 28-38 above, the cost of the study is not compensable.

(c) Recommendation

348. Based on its findings, the Panel recommends no award of compensation for public service expenditures.

2. Other

(a) Facts and contentions

349. The Water Authority also asserts that the influx of returnees resulted in increased demand on the water and sewerage systems thereby increasing the rate of depreciation of those systems. The Authority contends that as a consequence it sustained a resultant loss in the amount of JD 50,623,085 during the period 1990 to 1994, inclusive, for which compensation is sought. 78/

(b) Analysis and evaluation

350. The Panel notes that a large portion of the claim for increased depreciation falls outside of the compensable period and, as such, is not compensable in accordance with the principles of compensability discussed in paragraphs 28-38 above. With respect to any portion of the claim that may fall within the compensable period, the Panel finds that the Claimant has not produced sufficient and appropriate evidence that the increased depreciation is attributable to the returnees. Consequently, the Panel concludes that this portion of the claim is also not compensable.

(c) Recommendation

351. Based on its findings, the Panel recommends no award of compensation for the loss attributed to the increased rate of depreciation.

3. Summary of recommendations for the Water Authority

352. Based on the above, the Panel recommends the following amounts of compensation for the Jordanian Water Authority:

(1)	Public service expenditures:	nil
(2)	Other:	nil
	Total	nil

T. NATURAL RESOURCES AUTHORITY (UNCC Claim No. 5000275)

353. The Natural Resources Authority, an entity of the Ministry of Energy and Mineral Resources, describes its activities as principally concerned with "the exploration in Jordan for oil, natural gas, and mineral resources".

1. Contract

(a) Facts and contentions

354. The Authority claims compensation in the amount of JD 85,000 for the increase in the cost of equipment and materials that it attributes to price increases following Iraq's invasion of Kuwait.

355. The Authority also asserts that four of its projects were suspended for various periods, apparently for reasons of safety resulting from Iraq's invasion and occupation of Kuwait, but that it continued to pay the salaries of workers on those projects. Compensation is sought in the amount of JD 91,398 for the salaries. The projects related to renovation and maintenance, exploration, geological engineering and laboratory analysis. 79/

(b) Analysis and valuation

356. With respect to the claim for increased costs of equipment and materials, the Panel finds that the Claimant has failed to demonstrate that those costs were a direct result of Iraq's invasion and occupation of Kuwait. Consequently, the claim is not compensable.

357. With respect to the project suspension, the Panel notes that as discussed in paragraph 25 above, the land territory of Jordan was not the subject of military operations or the threat of military action. The Panel finds that the evidence does not indicate that the suspension of the projects was a precautionary measure taken in response to potential spillover effects from military operations in Israel or Iraq. Consequently, the claim for salaries is not compensable.

(c) Recommendation

358. Based on its findings, the Panel recommends no award of compensation for contract losses.

2. Income-producing property

(a) Facts and contentions

359. The Authority asserts that it feared that as a result of the hostilities precipitated by Iraq's invasion of Kuwait, its Hamza oil field and Risha natural gas field would suffer direct missile attacks from military operations. The Hamza field is located approximately 150 kilometres from Jordan's border with Iraq and the Risha field is located approximately one kilometre from the Iraqi border. The Authority suspended production at the Hamza and Risha fields from 15 January to 3 February 1991 and 18 January to 1 March 1991, respectively. The Authority seeks compensation in the amount of JD 645,337 for the loss of revenues from 250 barrels of oil per day and 18 million cubic feet of gasoline per day, which it asserts would have been produced, respectively, by the Hamza and Risha fields during the period of suspension.

360. The Authority also moved rigs and equipment away from both fields and claims compensation for the cost of their removal and return in the amount of JD 260,000.

361. Additionally, the Authority claims compensation in the amount of JD 130,266 for salaries and allowances paid to 418 employees whose work at the two fields was suspended during Iraq's invasion and occupation of Kuwait.

(b) Analysis and valuation

362. The Panel finds that the location of the Hamza field is too remote from the Iraqi border to raise a reasonable possibility that it would have suffered any spillover effects from military operations in Iraq precipitated by the invasion. Consequently, the losses claimed for the Hamza field are not compensable.

363. However, the location of the Risha field, approximately one kilometre from the Iraqi border, raised a reasonable possibility of effects of military operations in nearby Iraq spilling over into the area of the Risha field. Accordingly, the loss of revenues from the Risha field, the costs of moving its rigs and equipment away from the Iraqi border and the claimed salaries paid to Risha workers are, in principle, compensable for the duration of the claimed period, namely, 18 January to 1 March 1991.

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364. The Claimant was asked to provide details of daily production at the Risha field before and after shutdown. The Claimant failed to provide this information. In the absence of such data, the Panel is unable to verify a loss as a result of suspended operations.

365. With respect to the cost of moving the rigs and equipment at the Risha field, the evidence supports an award in the amount of JD 102,419.

366. The Panel finds that because production was suspended as a result of the spillover effect from military operations in nearby Iraq, the inability of the Risha workers to perform productive work was a direct result of Iraq's invasion and occupation of Kuwait. These salary payments are therefore compensable during the period of suspension. The Panel further finds that the Risha workers were specialized employees who could not, on short notice, be reassigned to other productive work. The evidence supports an award for salaries in the amount of JD 104,365.

(c) Recommendation

367. Based on its findings, the Panel recommends an award of compensation in the amount of JD 206,784 for income-producing property losses.

3. Summary of recommendations for the Natural Resources Authority

368. Based on the above, the Panel recommends the following amounts of compensation for the Natural Resources Authority:

(1)	Contract:	nil
(2)	Income-producing property:	JD 206,784
	Total	JD 206,784

PART III

A. SUMMARY OF RECOMMENDATIONS

369. The recommendations of the Panel are summarized as follows:

Table 2. Summary of recommended amounts in first instalment of "F2" claims

Ministry or Entity	Amount recommended (JD)	Amount recommended (converted to US$)
Ministry of Social Development	180,350	267,979
Ministry of Supply	1,246,684	1,879,965
Public Security Directorate	4,725,134	7,137,665
Armed Forces	3,397,593	5,137,825
Ministry of Tourism and Antiquities	116,113	172,274
Civil Aviation Authority	325,416	491,565
Civil Defence General Directorate	652,204	985,202
Electricity Authority	nil	nil
Ministry of Education	nil	nil
Ministry of Energy and Mineral Resources	nil	nil
Ministry of Finance	nil	nil
Ministry of Health	4,858,416	7,338,997
Ministry of Higher Education	nil	nil
Ministry of Interior	32,094,928	48,481,764
Ministry of Labor	nil	nil
Ministry of Planning	nil	nil
Ministry of Public Works and Housing	nil	nil
Greater Amman Municipality	nil	nil
Water Authority	nil	nil
Natural Resources Authority	206,784	312,363
Total	47,803,622	72,205,599

Geneva, 23 September 1999

(_Signed_) Mr. Francisco Orrego Vicuña
Chairman

(_Signed_) Mr. Jen Shek Voon
Commissioner

(_Signed_) Mr. Hans van Houtte
Commissioner

Notes

1/ Mr. Jen Shek Voon was appointed at the Governing Council's twenty-second session held on 14-16 October 1996 and Messrs. Francisco Orrego Vicuña (Chairman) and Hans van Houtte were appointed at its twenty-eighth session held on 29 June to 1 July 1998.

2/ Governing Council decision 10 (S/AC.26/1992/10) approved the Rules.

3/ Where permissible supplements or amendments have been made to a Claim, the Panel has based its review on the amended total. However, the Claimants are not permitted to increase amounts claimed by way of responses to article 34 notifications. Such increases are not included in the total amounts listed. See para. 120 of this report.

4/ Vol. XLV, No. 4, April 1991 (ST/ESA/STAT/SER.1/220). In contrast, the date of the exchange rate applied to calculate the recommended amounts is described in paras. 55-60 of this report.

5/ In support of this figure the Claimants cite Nicholas Van Hear, "Mass Flight in the Middle East: involuntary migration and the Gulf conflict, 1990-1991", in Geography and Refugees: patterns and processes of change, (1993) ("Van Hear"), p. 67.

6/ (S/AC.26/1994/2).

7/ Ibid., pp. 21-22.

8/ This is the figure most often used by the Claimants. In support they cite United Nations, Economic and Social Commission for Western Asia (ESCWA), Survey of Economic and Social Developments in the ESCWA Region, 1990-1991, August 1992 (E/ESCWA/DPD/1992/8), ("ESCWA Survey") p. 3. The Claimants allege that the majority were Palestinians who held Jordanian passports, and entered Jordan between August and December 1990, although they have not quantified the number.

9/ See United Nations Demographic Yearbook, 1996, 48th Edition, (ST/ESA/STAT/SER.R/27), p. 156; Jordan Population and Family Health Survey 1990, Jordanian Department of Statistics and Jordanian Ministry of Health (1992), p. 1, citing Population Projections for Jordan: 1990-2005, Jordanian National Population Commission (1991); and Nazem Abdalla, "Impact of the Gulf Crisis on developing countries" (1991), p. 14, informal background paper

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prepared for the United Nations Development Programme's Persian Gulf Task Force.

10/ This accords with other information before the Panel. According to one estimate, 90 per cent of these persons had been away for more than 10 years, 43 per cent for more than 20 years, and nearly a quarter had migrated before the early 1960s. See Van Hear, p. 76.

11/ P. 28. See also "Report and Recommendations made by the Panel of Commissioners concerning the First Instalment of Individual Claims for Damages up to US$100,000 (Category "C" Claims)" (S/AC.26/1994/3), ("First 'C' Report"), pp. 59-65.

12/ Governing Council decision 7, "Criteria for Additional Categories of Claims" (S/AC.26/1991/7/Rev.1), ("decision 7").

13/ "Report of the Secretary-General pursuant to para. 19 of Security Council resolution 687 (1991)" (S/22559), para. 20.

14/ Iraq has accepted this liability. See Security Council resolution 686 (1991), which notes that the Foreign Minister of Iraq confirmed, in letters to the Security Council after the suspension of offensive combat operations, Iraq's agreement to comply fully with several resolutions, including Security Council resolution 674 (1990). Para. 8 of resolution 674 (1990) provides that under international law [Iraq] is liable for any loss, damage or injury arising in regard to Kuwait and third States, and their nationals and corporations, as a result of the invasion and illegal occupation of Kuwait by Iraq.

15/ See "Report and Recommendations made by the Panel of Commissioners concerning Part One of the First Instalment of Claims by Governments and International Organizations (Category 'F' Claims)" (S/AC.26/1997/6) First 'F1' Report"), paras. 47-50; "Report and Recommendations made by the Panel of Commissioners concerning the First Instalment of 'E2' Claims" (S/AC.26/1998/7)("First 'E2' Report"), para. 44; and "Report and Recommendations made by the Panel of Commissioners concerning the First Instalment of 'E3' Claims" (S/AC.26/1998/13)("First 'E3' Report"), para. 23.

16/ Governing Council decision 15, "Compensation for Business Losses Resulting from Iraq's Unlawful Invasion and Occupation of Kuwait where the Trade Embargo and Related Measures Were also a Cause" (S/AC.26/1992/15), ("decision 15") para. 6. See also decision 7, paras. 31 and 36.

17/ Ibid., para. 3.

/...

18/ "Report and Recommendations made by the Panel of Commissioners concerning the Second Instalment of 'E2' Claims" (S/AC.26/1999/6) ("Second 'E2' Report"), para. 54.

19/ The "E2" First Report, para. 155. See also the First "F1" Report, para. 4.

20/ Pp. 13-14.

21/ See also the Second "E2" Report, para. 103.

22/ Security Council resolution 686 (1991).

23/ See also the Second "E2" Report, para. 68 ("two cumulative criteria must be met to find a threat of military action by Iraq outside Iraq or Kuwait for the purpose of establishing the Commission's jurisdiction over a claim based on that threat. One is that a specific threat by Iraq must have been directed at that location; the other, that the target of the threat, if any, must have been within the range of Iraq's military reach."). See also the First "F1" Report, paras. 94-96.

24/ See paras. 257 and 363 of this report.

25/ See Governing Council decision 9, para. 6, "Propositions and Conclusions on Compensation for Business Losses: Types of Damages and Their Valuation" (S/AC.26/1992/9) ("decision 9"), which states, in relevant part, that "[t]he trade embargo and related measures, and the economic situation caused thereby, will not be accepted as the basis for compensation" (footnote omitted).

26/ The "F1" Panel has often utilized the "temporary and extraordinary" requirement in its determinations. For example, in the "F1" First Report at para. 85 it held that "payments by Governments for temporary and extraordinary living expenses that result from individuals' departure from Kuwait or Iraq or their inability to return to those countries during the period of 2 August 1990 to 2 March 1991 are directly related to Iraq's invasion and occupation of Kuwait". In contrast, it held that "discretionary payments for ongoing ordinary living expenses that are incurred after a person has left the region and taken up a new residence should not normally be considered to be direct consequences of the invasion and occupation of Kuwait". In the same report, the "F1" Panel further determined that "payments involv[ing] the provision of temporary and extraordinary living expenses to persons cut off from their means of support in Kuwait and unable to return [were] as a direct result of Iraq's invasion and occupation of that country", at para. 86. See also the "E3" First Report, para. 177.

27/ See also the discussion at paras. 29-31 of this report concerning emergency humanitarian relief to evacuees and Governing Council decision 7.

28/ See, for example, para. 88 of this report.

29/ See also the "E2" Second Report, paras. 70-72.

30/ "United Nations Compensation Commission Claim Forms for Governments and International Organizations, Instructions for Claimants" ("category 'F' claim form"), para. 4. On 16 October 1992, the Commission's Executive Secretary circulated a letter to the Permanent Representatives of United Nations Member States in which he reiterated the pleading and evidentiary standard set forth in the Rules and on the category "F" claim form (S/AC.26/1992/None No. 55).

31/ See category "F" claim form.

32/ See para. 5 of this report.

33/ See, for example, the First "C" Report, pp. 31-32; the First "E2" Report, para. 279; "Report and recommendations made by the Panel of Commissioners concerning the first instalment of E4 claims" (S/AC.26/1999/4), para. 227; and the First "F1" Report, para. 100.

34/ United Nations Monthly Bulletin of Statistics, Vol. XLV, No. 4, April 1991, (ST/ESA/STAT/SER.1/220).

35/ Governing Council decision 16, "Awards of Interest", (S/AC.26/1992/16), para. 1.

36/ Ibid., at paras. 2-3.

37/ See category "F" claim form, Part "F", Summary of Losses Claimed.

38/ The Claimant classified this claim as "Public Service Expenditures".

39/ The Claimant classified this claim as "Public Service Expenditures".

40/ The Claimant classified this claim as "Public Service Expenditures".

41/ See para. 26 of this report.

42/ The Claimant classified this claim as "Public Service Expenditures".

43/ The value of that temporary and extraordinary benefit has been calculated by ascertaining the difference between the purchase cost of the generators and their value at the end of the compensable period. The calculation of the value of the generators at the end of this period takes into account their average life and the likely residual value at the end of their average life.

44/ The Claimant classified the claims in this paragraph as "Public Service Expenditures".

45/ The Claim Form submitted by the Public Security Directorate claims an amount of JD 4,500,500 whereas the schedules in support of this amount total JD 4,500,000. The Panel proceeded using the latter figure.

46/ The Claimant classified this claim as "Evacuation Costs". In response to an article 34 notification dated 3 June 1998, the Claimant withdrew that part of the Claim wherein the amount of JD 18,750 for storage of equipment in the desert had been sought.

47/ This estimate appears in the Public Security Directorate's Statement of Claim. However, elsewhere in that same document, it has asserted that the number of returnees amounted to 300,000.

48/ The Claimant classified the claims in this paragraph as "Public Service Expenditures".

49/ The Claimant classified the claims under this heading as a "Business Transaction or Course of Dealing".

50/ Provisional Summary Record of the eighty-first Meeting (Closed), (S/AC.26/SR.81), para. 33. This determination was based on Governing Council decision 19, "Military costs" (S/AC.26/Dec.19(1994)), in which the costs of the Allied Coalition Forces, including costs of military operations against Iraq, were held not to be compensable.

51/ The Claimant classified this claim as a "Business Transaction or Course of Dealing".

52/ Record of eighty-first Meeting, op. cit.

53/ "Eligibility for Compensation of Members of the Allied Coalition Armed Forces" (S/AC.26/1992/11).

54/ The Claimant classified the claim in this paragraph as "Evacuation Costs".

55/ The value prior to the damage was calculated on a depreciated replacement cost basis, i.e., the cost of replacing an asset, the value of which is reduced by depreciation charges that reflect the expired useful life

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of the asset. The salvage value was based on the second-hand cost of the parts that could be salvaged.

56/ The amount originally claimed was US$6 million. However, the Claimant reduced this amount by US$3,563,243 by way of a response to an article 34 notification dated 3 June 1998.

57/ The Claimant classified the claims under this heading as a "Business Transaction or Course of Dealing".

58/ The Claimant classified this claim as a "Business Transaction or Course of Dealing".

59/ The Claimant classified the claims under this heading as a "Business Transaction or Course of Dealing".

60/ The Claimant classified this claim as "Contract".

61/ The Claimant classified the claims in this paragraph as "Public Service Expenditures".

62/ The Claimant classified the claims under this heading as a "Business Transaction or Course of Dealing".

63/ The Claimant classified this claim as "Public Service Expenditures".

64/ The Claimant classified this claim as "Public Service Expenditures".

65/ The total amount claimed for the items listed in this paragraph is US$50,000 less than the sum of the items.

66/ The Claimant classified the claim in this paragraph as a "Business Transaction or Course of Dealing".

67/ The Claimant classified the claims under this heading as a "Business Transaction or Course of Dealing".

68/ The Claimant classified the claims in this paragraph as "Income-producing Property".

69/ The Claimant classified the claims in this paragraph as a "Business Transaction or Course of Dealing".

70/ The amount originally claimed was JD 336,000. However, the Claimant reduced this amount by JD 75,000 by way of a response to an article 34 notification dated 3 June 1998. The Claimant classified the claims under this heading as "Public Service Expenditures".

71/ The Claimant classified the claims under this heading as "Public Service Expenditures".

72/ The Jordanian academic year commences in September and ends the following June.

73/ The Claimant classified the claims under this heading as "Evacuation Costs".

74/ The Claimant classified this claim as "Public Service Expenditures".

75/ Governing Council decision 18, "Distribution of Payments and Transparency" (S/AC.26/Dec.18(1994).

76/ See also "Report and Recommendations made by the Panel of Commissioners concerning the Second Instalment of 'F1' Claims" (S/AC.26/1998/12), ("Third 'F1' Report"), paras. 116-118 and "Report and Recommendations made by the Panel of Commissioners concerning the Third Instalment of 'F1' Claims" (S/AC.26/1999/7), ("Fourth 'F1' Report") paras. 133-135.

77/ This is the amount claimed in the original Statement of Claim. In the Supplementary Statement of Claim the Municipality sought JD 68,359,074 but during the Commission's December 1998 technical mission to Jordan, the Municipality's representative stated that the original Statement of Claim reflected what was being claimed, and the Commission has received a letter from the Lord Mayor of Amman to this effect.

78/ The Claimant classified this claim as "Income-producing Property".

79/ The Claimant classified the claims under this heading as a "Business Transaction or Course of Dealing".

Annex VI

Decision concerning the first instalment of F2 claims taken by the Governing Council of the United Nations Compensation Commission at its 92nd meeting, held at Geneva on 9 December 1999*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure, the report and recommendations made by the panel of Commissioners concerning the first instalment of "F2" claims, covering twenty claims,[1]

Noting that the Panel's report and recommendations does not purport to expand the scope of direct causation but rather turns on the specific and limited facts of the claims before the Panel. The unique facts of the claim of the Ministry of Tourism and Antiquities led the panel to apply article 34 (b) of decision 7 (S/AC.26/1991/7/Rev.1) rather than article 34 (a),

1. Approves the recommendations made by the panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amount awarded, as noted in table 2 of the report, is as follows:

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* Previously issued as document S/AC.26/Dec.83 (1999).

[1] The text of the report appears in document S/AC.26/1999/23 (annex V above).

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (US$)	Amount of compensation recommended (US$)
Jordan	10	10	8,140,482,743	72,205,599

3. *Reaffirms* that when funds become available payments shall be made in accordance with decision 73 (S/AC.26/Dec.73 (1999)),

4. *Recalls* that when payments are made in accordance with decision 73 (S/AC.26/Dec.73 (1999)) and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), the Government of the Hashemite Kingdom of Jordan shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. *Requests* the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to the Government of the Hashemite Kingdom of Jordan.

/...

Annex VII

Report and recommendations of the Panel of Commissioners concerning the first instalment of F3 claims*

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* Previously issued as document S/AC.26/1999/24.

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GLOSSARY

"claimant"	Any Ministry or other entity of the Government of Kuwait on whose behalf the Government of Kuwait has filed an "F3" claim
"Commission" or "UNCC"	United Nations Compensation Commission
"Corps"	The U.S. Army Corps of Engineers (see paragraph 131)
"decision"	A decision of the Governing Council of the Commission
"emergency period"	The period from 27 February 1991 until 31 May 1991, as used by the Government of Kuwait to denote the period during which reconstruction and repair work commenced (see paragraph 190)
"expert consultants"	The expert accounting and loss adjusting consultants to the Panel (see paragraph 8)
"F3" claims	The claims filed with the Commission under the Commission's claim form entitled "Claim Form for Governments and International Organizations" by the Government of the State of Kuwait, except those that have already been reviewed by the Commission and those which the Commission has identified as environmental claims (see paragraph 1)
"Farah report"	"Report of the Secretary-General on the scope and nature of the damage inflicted on the Kuwaiti infrastructure during the Iraqi occupation" (S/22535)
"first instalment claims"	See paragraph 2

/...

"Form F"	The Commission's claim form entitled "Claim Form for Governments and International Organizations"
"GCC" or "Gulf Cooperation Council"	Cooperation Council for the Arab States of the Gulf, comprised of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates
"Government of Kuwait" or "Government"	The Government of the State of Kuwait
"Iraq"	The Government of the Republic of Iraq
"KERO"	Kuwait Emergency Reconstruction Office
"level of materiality"	See paragraphs 120 to 123
"liberation"	The liberation of the State of Kuwait from Iraq's invasion and occupation on 26 February 1991
"occupation period"	The period from 2 August 1990 until 26 February 1991
"PAAC"	Public Authority for the Assessment of Compensation for Damages Resulting from Iraqi Aggression
"pre-paid rent"	See paragraph 83
"principal claim amount"	See paragraph 4
"relief paid to employees"	See paragraph 32
"Rules"	The Commission's Provisional Rules for Claims Procedure, a text of which is annexed to Governing Council decision 10 (S/AC.26/1992/10)

"secretariat"	The secretariat of the Commission
"Social Security Fund"	See paragraph 41
"US$"	United States dollars

Introduction

1. At its twenty-eighth session, held from 29 June to 1 July 1998, the Governing Council of the United Nations Compensation Commission (the "Commission") appointed a Panel of Commissioners comprising Sir Elihu Lauterpacht (Chairman) and Messrs Andrew Jacovides and Reiner Soll (the "Panel") to review those claims filed by the Government of the State of Kuwait (the "Government of Kuwait"), known as the "F3" claims. These claims comprise all of the Government of Kuwait's claims, other than those already reviewed by the Commission and those which it has classified as environmental claims. The "F3" claims have been presented by the Government of Kuwait on behalf of its various Ministries and other entities. There are 62 such claims. Each claim is made for compensation for direct loss, damage or injury alleged to be a result of Iraq's invasion and occupation of Kuwait.

2. The first instalment of these claims, comprising 20 claims (the "first instalment claims"), was submitted to the Panel on 14 September 1998, in accordance with article 32 of the Provisional Rules for Claims Procedure (the "Rules"). 1/ This report contains the Panel's recommendations to the Governing Council on these claims, and is issued under article 38(e) of the Rules. The Panel intends to review the remaining "F3" claims in two further instalments.

I. OVERVIEW OF THE FIRST INSTALMENT CLAIMS

3. The first instalment claims were selected from among the "F3" claims on the basis of the types of losses each claim presented in order to enable the Panel, first, to consider so far as possible claims with similar loss types together and, second, to examine the main legal and valuation issues in the "F3" claims at the beginning of the Panel's work.

4. The first instalment claims seek compensation for losses totalling US$2,392,128,679 plus interest of US$455,720,297. The amount claimed, per claim, excluding interest (the "principal claim amount") is set out in the table below. The Panel's findings in respect of the first instalment claims (in section VI below) include a tabular breakdown of each first instalment claim that sets out the amounts claimed, the interest claimed, and the amounts awarded.

/...

Table 1. Summary of the first instalment claims

Claimant	UNCC Claim Number	Government Claim Number	Principal claim amount (US$)
Public Authority for Youth and Sports	5000022	18	8,073,928
Ministry of Finance - Kuwait Emergency Reconstruction Office	5000038	2	389,188,073
Amiri Diwan	5000043	7	7,391,290
Ministry of Finance	5000112	14	936,570,995
Ministry of Interior	5000137	20	292,631,800
Kuwait Fund for Arab Economic Development	5000138	21	9,263,851
State Audit Bureau	5000143	26	4,529,148
Council of Ministers	5000145	28	26,690,866
Department of Legal Advice and Legislation	5000146	29	2,413,083
Civil Service Commission	5000161	33	4,284,506
Ministry of Higher Education	5000167	39	2,515,858
Ministry of Commerce and Industry	5000168	40	20,937,074
National Committee for Missing and Prisoners of War's Affairs 2/	5000169	41	111,483,429
Kuwait News Agency	5000172	44	24,541,693
Ministry of Justice	5000177	48	81,311,962
Ministry of Awqaf and Islamic Affairs	5000178	49	68,075,121
Public Authority for Civil Information	5000179	50	32,437,230
Ministry of Education	5000180	51	93,808,789
Ministry of Social Affairs and Labour	5000188	56	58,872,844
Public Authority for the Assessment of Compensation for Damages Resulting from Iraqi Aggression	5000193	61	217,107,139
Total			2,392,128,679

5. Having regard to the complexity of the issues raised, the volume of documentation, and the amount of compensation sought, the Panel has classified all the first instalment claims as "unusually large or complex" within the meaning of article 38(d) of the Rules, thereby requiring the Panel to complete its review of these claims within a period of 12 months.

II. PROCEDURAL HISTORY

A. The nature and purpose of the proceedings

6. In undertaking its review of the first instalment claims, the Panel has borne in mind:

(a) the status and functions of the Commission;

(b) its claims review processes, which are documentary rather than oral, and inquisitorial rather than adversarial; and

(c) the Panel's function to provide an element of due process in the review of claims filed with the Commission.

7. The Panel has, like other panels, carried out a thorough and detailed factual and legal review of these claims, performing the investigative role incumbent on the panels in the claims review process.

B. The procedural history of the claims

8. Prior to the formal submission of the first instalment claims to the Panel, the secretariat of the Commission (the "secretariat") performed a detailed review of these claims and determined, in accordance with articles 14 and 15 of the Rules, that each of the claims complied with the formal and procedural requirements of the Commission. The review also demonstrated that the complex and technical nature of a number of the elements in the claims would require the Panel to make use of independent loss adjusters and accountants as expert consultants ("expert consultants"). These were selected in August 1998. The expert consultants have worked closely with the Panel, preparing for the Panel's consideration reports covering the verification and valuation issues raised by the claims.

9. Pursuant to article 32 of the Rules, the Panel was provided with claim summaries recording the significant legal and factual issues identified in the claims as well as other information, such as legal briefing notes and reports produced by observers shortly after the liberation of Kuwait, to assist the Panel in its review of the claims.

10. The review of each claim by the Panel identified in many cases a need for further information and evidence. Each of the claimants was given the opportunity to provide the Panel with such further information and evidence.

11. The Executive Secretary of the Commission submitted a report 3/ dated 8 July 1998 to the Governing Council in accordance with article 16 of the /...

Rules, which set out the first instalment claims and discussed the main factual and legal issues relating to them. A number of governments, including the Government of Kuwait and the Government of the Republic of Iraq, submitted additional information and views on the issues raised in response to that report.

12. Given the nature of the claims, the Panel determined that due process would require the provision to Iraq of copies of all of the claim files submitted by claimants. These were forwarded to Iraq pursuant to Procedural Order 1 issued in respect of each claim on 14 September 1998.

13. Iraq submitted a response to each of the first instalment claims. Each response included a statement of its position regarding the Commission's procedures and operation and raised specific issues of law, verification, valuation or fact. The Panel has duly considered these responses and has investigated those issues of fact accompanied by sufficient information to make investigation possible. Details of the responses so investigated, and the Panel's findings in respect of them, are set out in the consideration of each of the claims below.

14. In its responses to the claims, Iraq also requested the Panel to hold oral hearings into each claim at which Iraq would be permitted to attend and make submissions. Iraq has made similar requests in relation to the Commission's review of other claims. The Panel has considered carefully whether such hearings are required for the processing of the claims and their proper review by the Panel. The Panel concludes, in common with other panels, that the submissions and documents made available to it and the additional information obtained by it have permitted a thorough and fair determination and evaluation of each of the claims. Consequently, the Panel finds that it is not necessary to hold oral hearings.

15. At the direction of the Panel, technical missions were sent to Kuwait and to Winchester, Virginia, in the United States of America, 4/ to investigate certain factual and valuation issues and to carry out on-site inspections. Six such missions took place between August 1998 and June 1999. In June 1999, one of the Panel members, Commissioner Jacovides, participated in one such mission to Kuwait. The missions to Kuwait also included meetings with PAAC and the Government of Kuwait's advisers, interviews with certain claimant witnesses, inspection of documents and visits to sites of physical damage and reconstruction. The findings of each mission are set out in the relevant sections of this report. The Panel has also reviewed videotape evidence submitted by the Government of Kuwait.

III. THE LEGAL FRAMEWORK

A. Applicable law

16. The law generally to be applied by the Panel is found in article 31 of the Rules. This provides that the Panel shall apply:

> "Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law".

17. The principal substantive rule applied by the Panel is paragraph 16 of Security Council resolution 687 (1991). In this, the Security Council declared Iraq to be liable under international law "for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait".

18. The Panel has taken note of certain findings contained in the reports of other panels of Commissioners, which have been approved by the Governing Council, regarding the interpretation of relevant Security Council and Governing Council resolutions and decisions, as well as the reports of the Executive Secretary issued pursuant to article 16 of the Rules and the responses to them.

B. The directness requirement

19. The Panel construes the requirements of paragraph 16 of Security Council resolution 687 (1991) as meaning that all loss or damage directly caused by Iraq's invasion and occupation of Kuwait is in principle compensable and, correspondingly, that any loss or damage not so caused is not compensable.

20. The Panel has also taken into account the Governing Council's guidance on the interpretation of these requirements, notably as set out in decisions 7 5/ and 15. 6/

21. Paragraph 34 of decision 7 provides as follows:

> "These payments are available with respect to any direct loss, damage, or injury to Governments or international organizations as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:
>
> (a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;
>
> (b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;
>
> (c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;
>
> (d) The breakdown of civil order in Kuwait or Iraq during that period; or
>
> (e) Hostage-taking or other illegal detention".

22. Paragraph 6 of decision 15 confirms that there "will be other situations where evidence can be produced showing claims are for direct loss, damage or injury as a result of Iraq's unlawful invasion and occupation of Kuwait", in relation to which claimants will have to prove that a loss is "direct". Paragraph 3 of decision 15 emphasises that for any alleged loss or damage to be compensable, the "causal link must be direct".

23. The Panel finds that there is ample authority in international law, including the reports of other panels, 7/ to support the view that a "direct loss" in these circumstances is one which, as a matter of objective assessment, would have been expected as a normal and natural consequence of Iraq's invasion and occupation of Kuwait. This is the test of causation that the Panel has applied to these claims.

C. Mitigation

24. In assessing the first instalment claims, the Panel has borne in mind the duty of the injured party to take all reasonable measures to avoid, diminish or mitigate the damage resulting from Iraq's invasion and occupation of Kuwait, 8/ and finds that the reasonable costs of so doing are themselves compensable.

IV. CONSIDERATION OF COMMON LEGAL ISSUES

A. Approach

25. Many of the legal issues raised in the first instalment claims arise more than once. The Panel therefore finds it appropriate to report first on issues common to several claims and then, in the light of these common considerations, to examine and report on each claim individually. The Panel now turns to such common legal issues.

B. Property losses

26. As to property losses, the Panel notes that in the first instalment claims there are 10 claims totalling US$494,622,998 for loss of real property and there are 16 claims totalling US$93,667,608 for loss of tangible property.

27. Some claimants assert that their premises were occupied by Iraq. All claimants provide evidence of loss, damage or destruction by way of witness statements, damage assessment reports and/or photographs or videotapes. Understandably, much of this evidence dates not from the occupation period itself, but rather from the period after liberation, when Ministry or other Government of Kuwait personnel were able to re-enter the premises of the various Ministries or other Government entities, as the case may be.

28. The Panel has also taken into consideration the Farah report, 9/ which sets out in detail 10/ the level of damage and destruction found after liberation. The report noted that the damage, while generally minor from a structural point of view, included significant damage to walls and installations. It also noted widespread vandalism and looting of equipment and furnishings.

29. The Panel is accordingly satisfied that the evidence submitted in support of the claims for property losses is sufficient to demonstrate that the losses were direct, falling within the provisions of paragraph 34 of decision 7 11/ and those of paragraph 13 of decision 9. 12/

30. Accordingly, the Panel recommends compensation for such losses, subject to their verification and valuation carried out in the manner described in paragraphs 109 to 115 below. In relation to claims for vehicles, the Panel reviewed a motor vehicle valuation table submitted by the Government of Kuwait that lists the value of a wide range of motor vehicles in Kuwait as at 1 August 1990. After independent inquiries were made by the expert consultants as to the accuracy of this table, the Panel, in common with other panels, accepted it. 13/

/...

C. Relief paid to employees

31. At the outset it is necessary to make it clear that the discussion in this section, and the amounts examined in it, relate not only to the first instalment claims, which are the principal subject of this report, but also to the other "F3" claims. This explains the large size of the totals involved.

32. Thirty-six of the sixty-two "F3" claimants seek compensation for relief payments made to the Kuwaiti and Gulf Cooperation Council ("GCC") employees of the Government of Kuwait. The payments amounted to the salaries the employees would have earned, but did not receive, in respect of the occupation and emergency periods. Each such claimant seeks compensation in respect of its own employees. These employees, some of whom remained in Kuwait during the occupation and emergency periods and some of whom left after Iraq's invasion and occupation of Kuwait, did not receive their regular salaries during those periods. The Government made the relief payments in a series of lump-sum payments commencing after liberation, and claims the amounts so paid. The total amount of the compensation sought for these payments in all the "F3" claims is US$2.03 billion and the number of employees in respect of whom such claims are made is around 100,000.

33. The facts surrounding each of these claims are sufficiently similar for the Panel to consider them together. The amounts claimed constitute a not insignificant percentage of the total compensation sought by the Government of Kuwait. The Panel has therefore found it appropriate to set out its consideration of these claims in detail.

34. The Government supplemented each of these claims by submitting in May 1998 additional information that included the following background:

> "In 1991, Kuwait's Council of Ministers directed, in partial relief for the major losses suffered as a result of Iraq's invasion and occupation, that Government organizations should pay the salaries that their Kuwaiti and GCC employees would have earned during the seven-month occupation period ... and three-month recovery period".

35. Paragraph 36 of decision 7 provides in part as follows:

> "[P]ayments are ... available to reimburse payments made or relief provided by Governments or international organizations to others - for example to nationals, residents or employees or to others pursuant to contractual obligations - for losses covered by any of the criteria adopted by the Council".

36. The Panel finds, on the basis of the considerable evidence now made available to it, that the payments for which the claimants seek compensation were made to compensate for the loss of the employees' financial support during the occupation and emergency periods. Such payments constitute payments made or relief provided to others within the meaning of paragraph 36 of decision 7 and are thus in principle compensable.

37. In assessing the amount of compensation to be paid, the Panel has borne in mind the number of employees concerned and the impossibility of calculating the actual entitlement of each individual. It has therefore proceeded on the basis of calculating the compensation payable in respect of the employees by way of an average individual entitlement (the "entitlement"), using information provided by the claimants and the Government so as to ensure that the entitlement is as representative as possible.

38. The two main factors determining the entitlement are the length of the period for which payment of compensation is justified and the amount of salary which would have been received by each individual during that period, less appropriate deductions as explained in paragraphs 41 to 48 below.

39. With respect to the first factor, the Panel finds that compensation should be awarded based on the period that the employees were reasonably unable to work. Recalling that the positions of the employees were suspended, not terminated, the Panel concludes that it was usually not possible for the employees to resume their positions until the end of the emergency period. The employees were thus reasonably unable to work during both the (seven-month) occupation period and the (three-month) emergency period, a total of ten months.

40. With respect to the second factor, the first step undertaken by the Panel is to compare the monthly amounts ordinarily received by way of salary by the employees and the amounts actually paid retrospectively. 14/

41. The Panel notes that the Government of Kuwait operates a social security system which confers pensions and similar benefits on employees, and which is funded by contributions from employers and employees (the "Social Security Fund"). These contributions are calculated as a percentage of salary and the contributions of the employees, being five per cent of gross salary, are deducted at source from the salaries paid to them. As part of the first step described above, the Panel requested the Government to confirm whether the amounts paid to the employees and claimed as relief took into account the employees' contributions where necessary and whether there had been any loss of benefits to the employees. The Government responded that there had been no loss of benefits, and that some

but not all claimants had accounted for the contributions by paying to the employees only their gross salary less the five per cent deduction. The Panel has taken the Government's response into consideration and reviewed it in light of the evidence provided in support of each claim. The Panel has found that suitable account has been taken in a number of claims. The Panel has therefore determined that an adjustment should be made to the amounts claimed in cases in which the Panel is not satisfied that the social security contributions have been adequately accounted for.

42. In order to ensure that the entitlement accounts for the employees' true losses, as a second step the Panel considers and brings into account the employees' entire financial receipts (including the benefits received from relief programmes) and expenditures over the compensable period. Furthermore, the Panel has applied the general principle that any incidental benefit or gain on the part of a victim should be offset against his or her losses. In other words, "saved" expenses, that is, expenses that the employees would ordinarily have incurred if Iraq's invasion and occupation of Kuwait had not taken place, but did not in fact incur during the period for which compensation is recommended, fall to be deducted from the entitlement.

43. In order to ascertain what other relief payments were made and what expenses the employees might have "saved" during the period, the Panel issued Procedural Order 15 in respect of all relevant first instalment claims, seeking information in this connection. A comprehensive response was received, which provided a model of the average Government employee covering the amount and nature of his or her income and expenditure and the benefits obtained by him or her through policies implemented by the Government of Kuwait during the period.

44. This response showed that the pre-invasion levels of consumption in Kuwait were very high, exceeding on average the average Government employee's monthly salary. 15/ It also described a wide-ranging programme of relief payments. 16/ The Panel has taken this information into account. 17/

45. The Government submitted that only a few employees who left Kuwait could demonstrate that their costs outside Kuwait exceeded the relief received and that these employees have made individual claims before the Commission. With regard to those who did not leave Kuwait, the Panel assumes that any losses in respect of additional costs incurred could similarly have been the subject of claims before the Commission. Accordingly, the Panel assumes that additional living expenses and the relief paid in respect of them need not be taken into account when calculating the employees' true losses.

46. In the light of the above considerations, the Panel finds that deductions for "compensation received elsewhere for the same loss" should be made in respect of the free food and utility services provided in Kuwait over the period above. 18/

47. The Panel further finds, from the model provided by the Government of Kuwait, that the employees who were outside Kuwait during the period did indeed "save" certain expenses in Kuwait. 19/ That is, they did not incur a proportion of ordinary and anticipated living expenses over the period.

48. On the basis of the matters noted in paragraphs 46 and 47 above, the Panel recommends a deduction of 60 per cent from the amounts claimed. That is, the Panel recommends a total award of 40 per cent of the relief paid to employees and claimed in each of the relevant "F3" claims, subject to verification of the amounts claimed and the Panel's assessment of the evidence presented. 20/ Accordingly, the Panel recommends an award to each respective claimant calculated in this manner.

D. Loss of revenue

49. A number of the Government of Kuwait's claims seek compensation for the loss of revenue that would have been earned by the relevant claimant during the occupation, emergency and subsequent periods. The facts and circumstances of each claim vary according to the nature of the revenue-generating activity, but the basic question of the compensability of the Government's loss of revenue is relevant to all such claims, and the Panel has therefore considered the question as a common legal issue.

50. The Panel has considered whether losses of the Government of Kuwait's revenues are compensable in accordance with paragraphs 1 to 4 of Governing Council decision 9. 21/ These paragraphs state that the propositions and conclusions contained therein "shall apply to compensation for the loss of earnings or profits and other business losses covered by Security Council resolution 687 (1991)" and, after noting the liability of Iraq for direct losses, continue that "[u]ltimately it will be up to the commissioners to identify the applicable principles and apply them to the circumstances of particular cases".

51. The Panel is satisfied that Iraq's invasion and occupation of Kuwait led to the interruptions in Government services complained of, but that, by reason of the diversity of economic factors bearing upon each case, the determination of any revenue losses suffered has to be made separately for each claim.

52. The Panel will discuss in section VI below, in connection with the first instalment claims, whether individual revenue losses are compensable

and, if so, the measure of compensation and the time period in respect of which compensation should be paid. The Panel finds that the time period is that during which the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait. The Panel has considered such time periods by reference to historical revenue trends and notes that the periods may in some cases extend to several years.

53. The Panel appreciates that acceptance of a loss of revenue as a compensable claim assumes that the revenue-generating activity would have continued at the same general level if Iraq's invasion and occupation of Kuwait had not occurred. It is, of course, true that all revenue collection depends upon some activity by a third party, e.g., a licensee seeking a licence for which he or she must pay. But the fact that the collection of such revenue is predicated upon the action of a third person cannot be seen as breaking the chain of causation between Iraq's invasion and occupation of Kuwait, on the one hand, and the particular loss of revenue, on the other. This is because the third party's action belongs to a class of conduct the continuation of which in periods of normality can reasonably be expected. Losses of revenue arising from the fact that fines or other penalties were not generated during the occupation and emergency periods are also to be treated in the same manner as other claims for loss of revenue and are to be valued accordingly.

54. In order to have a basis for assessing the extent and nature of revenue that could have been expected to be earned and that which was in fact earned, and to assist it in the consideration of the individual losses of revenue described below, the Panel issued Procedural Order 4 to obtain information as to revenue earned by relevant claimants in the period from 1 July 1985 to 30 June 1995. The information thus provided has been taken into consideration by the Panel in reaching the recommendations in section VI below.

55. In calculating revenue losses, the Panel has again applied the general principle that any incidental benefit or gain on the part of a victim should be offset against his or her losses.

56. This principle involves two considerations: first, that any expenditure which would have been incurred in the generation of the revenue lost, but which has not been so incurred, should be brought into account to reduce the claimed loss; 22/ second, where the Panel has identified extraordinary or increased revenues flowing from Iraq's invasion and occupation of Kuwait, such revenues should be accounted for in like manner. The Panel has therefore taken any such extraordinary income into account in connection with the loss of revenue claims.

57. The Panel has also taken account of amounts going to generate revenue in one Ministry or Government entity that would have been paid by another.

This is because any such loss of revenue by one Government entity is an expense saved by the entity that would otherwise have paid it.

58. The Panel notes that the revenue of the Government of Kuwait may have been affected by changes in the population composition of Kuwait after liberation and has considered the impact of such changes where necessary.

E. Contract interruption losses

59. The Government of Kuwait has presented a number of claims for compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990 23/ and which had been concluded between a Government entity and third-party contractors, generally for the construction of a building or facility. The work was usually under way at the time of the invasion of Kuwait. In most cases, the relevant Government entity asserts that the contractor refused to complete the remaining contract work without extra payment to cover the costs of site restoration, increases in the cost of materials and other cost increases in the post-liberation period. The claimants usually negotiated a revised price with the contractors.

60. "Contract interruption losses" therefore encompass claims for increased costs under re-negotiated contracts, reflecting in certain cases additional work, such as site restoration. In considering these losses, the Panel, like the "F1" panel, 24/ has noted the obligation on each claimant, arising from article 35(1) of the Rules, to demonstrate that a particular loss is eligible for compensation. In the context of contract interruption losses, therefore, the claimants must demonstrate that the price increases were a direct result of Iraq's invasion and occupation of Kuwait.

61. Recalling the obligation upon the claimants under article 35(3) of the Rules to submit sufficient evidence to prove their losses, the Panel sought information as to the conditions pertaining in the construction and building industry both before and after the occupation period, including information as to the number and nationality of construction workers in both periods. The Panel has considered such information in arriving at its recommendations on the first instalment claims set out below.

62. The Panel finds that, following the liberation of Kuwait, there was a general increase in the price of goods and services in Kuwait and that such increase was the result of many factors, the precise effect of which it is impossible to identify.

63. In relation to only three causes of increases in price has the Panel been able to determine that the causal link was "direct". These are price rises shown to be linked specifically to:

(a) site restoration costs (including those related to the replacement of materials and equipment taken during Iraq's invasion and occupation of Kuwait and which were needed for the resumption of construction contracts);

(b) additional transportation costs (including double-handling costs); and

(c) additional insurance costs. 25/

64. The Panel has determined that price increases caused by these factors are compensable. As regards other causes of price increases, the Panel was unable to conclude that they were a direct result of Iraq's invasion and occupation of Kuwait.

F. Buildings not intended to be rebuilt

65. The Government has presented a number of claims for compensation for damage to buildings, usually schools or mosques, which will not be rebuilt principally because of their location near the border between Kuwait and Iraq or on Failaka Island. The claim is usually made for the estimated cost of reconstructing the building.

66. The Panel finds that the damage to such buildings is, in principle, compensable. In particular, the Panel finds that Iraq is liable for damage caused by it, even if the Government of Kuwait decides not to rebuild or repair the damage. However, the Panel has awarded as compensation the cost of reconstruction only in cases in which it is satisfied that the relevant building was incapable of repair. In other cases, only the cost of repair is awarded. In appropriate cases, the Panel has made adjustments for such items as depreciation, wear and tear, and reduced maintenance expenses arising from not having to maintain the building in the future. The compensation is measured by the cost at such time as it would be reasonable, in the ordinary course of events, to expect reconstruction or repair to have taken place.

G. Damage to leased premises

67. The Government of Kuwait has presented a number of claims for the cost of repairing damage to premises which it occupied as tenant at the time of Iraq's invasion and occupation of Kuwait.

68. The Panel has noted that, in common with a number of legal systems, such repairs may legally have been the responsibility of the landlord pursuant to the lease and/or Kuwaiti law. To require the landlord to undertake the repairs and subsequently claim the cost from the Commission or (if the landlord was unwilling or unable to undertake the repairs) to require the Government of Kuwait to undertake the repairs and reclaim the cost from the landlord and not the Commission would, in the circumstances of Iraq's invasion and occupation of Kuwait and the widespread damage to the Government's facilities, be too technical and rigid an approach. The Panel finds that where premises leased to the Government were damaged as a result of Iraq's invasion and occupation of Kuwait, the cost of the repairs should be awarded to the person who paid for them, provided that the other party to the lease has not been awarded compensation for the same loss.

69. In order to ensure that the Commission recommends payment only once for repairs to each of the damaged buildings in question, the Panel instructed the secretariat to examine the claims of the relevant landlords and advise the Panel of any duplication of claims in respect of the repairs. An award has been made by the Panel only where no duplicate claim has been awarded by the Commission.

H. Contractual provisions allowing penalties for late completion or other breaches of contract

70. The Government of Kuwait has presented a number of claims for compensation for the full price of contracts for repair or reconstruction made after the end of the occupation period, although there were provisions within such contracts for a reduction in the contract sum for late completion or other breaches. Although it is at times apparent that a situation may have existed giving rise to the right to use such provisions, in most instances there is no evidence of advantage having been taken thereof.

71. The Panel has considered the effect of such provisions, and of whether or not they were invoked, on the extent of compensation payable. The Panel notes the obligation on each claimant to obtain a reasonable price for remedial works. Having regard to this obligation, and as part of the overall determination of the reasonable cost of the repair or reconstruction, the Panel finds that where the evidence shows that a

reduction in the contract sum could have been insisted on, a reduction in the claim to that extent is warranted.

I. Temporary repairs followed by more permanent repairs

72. The Government of Kuwait has presented a number of claims for the cost of urgent work undertaken to effect temporary repairs (for example, the claim in relation to the Kuwait Emergency Reconstruction Office). The cost of subsequent and more permanent repair has also been claimed in many cases, sometimes found in the same claim as the temporary repairs and sometimes in a different claim.

73. The Panel has considered whether and to what extent the assessment of loss should take into account the cost of such temporary repairs. Many of the Government's facilities and services suffered a considerable amount of damage as a result of Iraq's invasion and occupation of Kuwait. In many cases, and particularly in the immediate post-liberation period, it was essential rapidly to restore these facilities and services to at least a minimum operating capacity. In other cases, temporary repairs prevented greater damage being caused to the Government's facilities and services and thus helped to mitigate future damage. The Panel therefore considers that it was reasonable for the Government to address required emergency repairs as priorities and then to undertake permanent repairs at a later time. The Panel finds that the cost of temporary repairs which were reasonably necessary in the circumstances is compensable and has proceeded on this basis.

J. Temporary premises

74. The Government of Kuwait has presented a number of claims for the cost of renting residential or business premises in Kuwait during periods in which the construction of new premises or the repair of existing premises was delayed as a result of Iraq's invasion and occupation of Kuwait. The claim for compensation is for the cost of renting alternative premises for varying periods following liberation.

75. The Panel determines that in principle such costs should be awarded for a reasonable period following liberation. In each specific case, consideration has been given to the nature of the damage and to the time normally likely to be necessary to effect site restoration, repairs or to complete construction. Associated with the latter question is that of the attribution of the cause for the relevant delay. In this regard, the Panel finds that the principles set out in paragraph 63 above are pertinent.

76. The Panel similarly finds that the costs of providing temporary housing to employees who, before the invasion, were provided with

accommodation by a Ministry, is compensable to the same extent as the costs of temporary premises.

77. The Panel has sought to ascertain the reasons for the delay in the construction of new buildings and has scrutinised the evidence to identify both the original contractual date for completion of the new premises and the date for completion under the resumed contract. It has done so to ensure that delays arising other than from Iraq's invasion and occupation of Kuwait, including pre-invasion delays, are not considered in the ascertainment of the loss.

K. Temporary headquarters outside Kuwait

78. The Government of Kuwait has presented a number of claims for the expenses of operating offices outside Kuwait during the occupation and emergency periods and for some short period thereafter.

79. The Panel recalls that as a result of Iraq's invasion and occupation of Kuwait, many of the Government's usual operations in Kuwait could not continue there. The Government was therefore obliged to conduct its operations elsewhere. Further, in some situations, the operation of offices outside Kuwait prevented greater damage being caused to the Government and to the people remaining in Kuwait. The Panel thus finds that the cost of operating offices outside Kuwait is compensable where the decision to establish such operations was reasonable in the circumstances. In each such claim, however, the Panel has been careful to ensure that only reasonable costs are allowed and it has deducted expenses that would ordinarily have been incurred in Kuwait if Iraq's invasion and occupation of Kuwait had not occurred.

L. Cost of returning employees to Kuwait

80. The Government has also presented a number of claims for the cost of returning its employees to Kuwait after liberation to enable them to resume work. Most of these employees were non-Kuwaitis who left Kuwait following Iraq's invasion and occupation to return to their home countries.

81. The Panel finds that the reasonable costs of returning employees to Kuwait are compensable:

(a) under paragraph 34(b) of decision 7 where the cost of returning employees is a necessary consequence of evacuation; or

(b) where the return of the employees was a reasonable step in mitigation of loss (for example, where it is shown that the cost of returning an employee is less than the cost of hiring and training a new employee).

82. In each case the Panel has considered whether the costs were reasonable and were wholly incurred as a result of Iraq's invasion and occupation of Kuwait. In particular, the Panel has taken into consideration such factors as whether the employees would have been granted home leave during the period in question and whether the employees travelled in a class higher than appropriate. 26/

M. Pre-paid rent

83. A number of the first instalment claims seek compensation for rent paid in advance on office or other premises ("pre-paid rent"). The claimants maintain that no benefit for the amounts paid was derived during the seven month occupation period and during the months following liberation because the Government was unable to use the premises. In each such case the Government claims the amount of the pre-paid rent for the period during which it is asserted that no benefit was obtained.

84. The Panel finds that compensation should be awarded where rent has been pre-paid on premises but only for the period that the Government of Kuwait was unable to use the premises as a direct result of Iraq's invasion and occupation of Kuwait. 27/ The measure of compensation should be the amount of pre-paid rent referable to that period, since such rent is an accurate indicator of the value of the benefit lost. The Panel has considered in each first instalment claim whether the claimant has demonstrated that its inability to use the premises for the period claimed was a direct result of Iraq's invasion and occupation of Kuwait, such as would have been the case if, for example, Iraq had occupied the premises in question.

85. The Panel is satisfied that there were no means by which the Government of Kuwait could have recovered the pre-paid rent and that, therefore, there has been no failure to mitigate on the part of the Government.

N. Avoiding over-compensation

86. The Panel notes that the Government of Kuwait's activities in Kuwait were interrupted during the occupation and emergency periods and it would appear, therefore, that a proportion of usual Government expenditure may not have been incurred. The Panel has begun examining and will continue to examine throughout its review of the F3 claims whether and to what extent to bring into account any such unincurred expenses by way of set-off against the amount of compensation awarded to the Government.

87. In relation to the first instalment claims, the Panel has adopted and applied the following principles:

(a) loss of revenue claims should be awarded net of the identifiable expenses which would ordinarily have been incurred in the generation of that particular revenue (including, where appropriate, salaries); 28/

(b) where it can be established that expenses were saved as a result of damage to or destruction of assets, adjustments should be made to reflect this (see, for example, the claim for quality control testing equipment in the claim of the Ministry of Commerce and Industry at paragraph 317 below); and

(c) in claims for the cost of operating temporary offices outside Kuwait, considered at paragraphs 78 and 79 above, adjustments should be made to reflect any expenses saved by not operating offices in Kuwait.

88. The Panel does not consider it appropriate to deal with the more general question of unincurred expenses, which have not been brought into account as set out in the preceding paragraph, in a piecemeal fashion in the first instalment claims. It prefers, instead, to deal with the matter in a single consideration which can best take place in the context of the claim relating to the Kuwait Investment Authority 29/ to be reviewed in the third instalment. At that time the Panel will wish further to consider the following factors:

(a) that not all the Government's losses are compensable by the Commission, and not all Government losses have been claimed;

(b) that the Panel's recommendations in relation to certain claimed losses may include reductions for evidentiary reasons;

(c) that any reduction in Government expenses may have had a correlative effect on the benefits that the Government and its citizens would otherwise have enjoyed; and

(d) that revenue claims have been submitted by Kuwaiti entities in other claim categories and, in some cases, compensation may have been awarded by the Commission.

89. In this connection, the Panel requested from the Government of Kuwait, amongst other things, information as to the historic income and expenditure position of the Government and the Kuwaiti economy as a whole, a history of the financial reserves of the Government for the period 1986 to 1996, details as to claims made to the Commission for loss of revenue

and an indication as to revenue losses for which no claim has been lodged with the Commission.

90. The Government of Kuwait submitted a detailed response which provided extracts from its national accounts and the bases upon which its financial information is recorded, a description of budgets and procedures, explanations as to the bases of presentation of financial accounts and statistics, and details of revenue claims before the Commission. The Panel notes that the Government keeps confidential certain information regarding its financial reserves and assets and that only limited secondary sources of such information are available.

91. The adjustments in the first instalment claims in relation to matters falling within sub-paragraphs 87(b) and 87(c) above will be borne in mind by the Panel when eventually considering the more comprehensive question of the overall position of the Government as set out in paragraph 86 above.

O. Claims preparation and claims processing costs

92. The Government of Kuwait has presented a claim for claims preparation costs (being the fees of attorneys and other professional persons, and costs of support and secretarial staff, reproduction, and communication facilities). 30/ This claim aggregates such costs incurred in relation to the preparation of virtually all "F3" claims. It also includes the Government's own claims processing costs (being the cost of the administrative work involved in dealing with claims, including the establishment of necessary infrastructure such as PAAC). It is not clear which portion of the claim is for claims preparation costs and which portion is for claims processing costs.

93. The Panel has been notified by the Executive Secretary that the Governing Council intends to resolve the issue of the compensability of claims preparation costs in the future. Accordingly, the Panel makes no recommendation with respect to the claim for such costs.

94. As to claims processing costs, the Panel notes that decision 18 31/ provides for compensation for such costs by allowing for the deduction of a set fee from payments made to claimants. In light of this decision, the Panel considers itself bound not to recommend any additional compensation in respect of claims processing costs.

P. Exchange rate

95. The claims for repair costs or replacement materials involve losses incurred in Kuwaiti dinars ("KD") or other currencies, but in all cases converted into and claimed in United States dollars. The Commission issues awards in United States dollars. The Panel must therefore consider whether the exchange rates used by the claimants are appropriate.

96. The Government of Kuwait states that, generally, when a single payment was made the exchange rate used was the rate on the date of payment; when many payments were made the rate was the average rate or rates for the relevant period over which the payments were made; and, for future payments, the rate was the average rate for the most recently available twelve-month period.

97. The Panel finds that such an approach is reasonable in the circumstances. In some cases other factors operate. These are described in the recommendations for the claims concerned.

Q. Interest

98. The Government seeks interest on the principal claim amount in respect of each first instalment claim. Decision 16 provides in part that "interest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". The Governing Council has stated that it will address the methods of calculation and payment of interest in the future. It is thus for the Panel to determine only the date from which interest is to run.

99. The Panel has considered how for the purposes of calculating interest the date of a specific loss is to be determined. It finds that, in the context of the enormous number of individual claim items, within several loss types, a specific determination for each claim item is impractical. The Panel has, therefore, concluded that for this purpose all losses should be deemed to have occurred on one single date.

100. The Government of Kuwait itself identified two possible dates at two different stages of the proceedings. The Government first selected, in its "Summary Report of Government Claims" submitted in July 1994, 26 February 1991 as the relevant date. This was on the basis that it was the last date on which Iraq could have taken or damaged assets, and that the Government was entitled to interest from that date, regardless of when expenditure was incurred on repairing or replacing the asset. A further reason was that since many of the losses occurred near the end of the occupation, the date of liberation was closer to the date of the actual losses than any other.

/...

In a subsequent submission, however, filed in May 1998, the Government amended its first submission to provide that interest should accrue from 2 August 1990, the date on which Iraq invaded Kuwait.

101. The matter has to a large extent already been examined in the "Report and Recommendations made by the Panel of Commissioners Appointed to Review the Well Blowout Control Claim (the "WBC Claim")" 32/ wherein the panel took the view that Kuwait did not suffer loss until it actually disbursed the costs of repair or reconstruction. The Panel shares this view and is therefore unable to accept Kuwait's second submission, that interest should commence on 2 August 1990.

102. Having regard to the varying dates of loss and the need to select one date for interest purposes, the Panel determines that, in all the circumstances, the date of loss for calculation of interest is 26 February 1991. 33/

V. VERIFICATION AND VALUATION

A. The importance of evidence

103. The Rules direct that each claim must be supported by sufficient evidence. Thus, article 35(1) of the Rules prescribes that:

> "Each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991). Each panel will determine the admissibility, relevance, materiality and weight of any documents and other evidence submitted."

104. In relation specifically to governmental claims, article 35(3) provides that:

> "... such claims must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss".

105. Pursuant to these provisions, each claimant has submitted a considerable body of documentary and other evidence in support of its claim. Some of this material was filed with the statement of claim itself; substantial further material has been provided in response to questions raised by the Panel; and still other material has been submitted to the Commission and reviewed (in some cases during on-site inspections) in Kuwait and elsewhere.

106. The evidence submitted by the claimants, including that additionally requested by the Panel, comprises, in most cases, a sample of the documents available. The size of the sample has been determined by reference to the nature of the loss and the character and quantity of the evidence available.

107. The Panel has addressed a number of specific requests to various Ministries and other Government entities for additional information and documents in their possession. These requests took the form of procedural orders, and other requests issued pursuant to procedural orders, of which to date some 100 have been issued. The responses to each such order or request, and their accompanying documents, have been duly considered by the Panel and its expert consultants.

108. The Panel has noted the claimants' general assertions that physical damage and destruction during Iraq's invasion and occupation of Kuwait included the destruction of large numbers of documentary records, though the degree of destruction varied from claimant to claimant. As a result, certain elements of claims are supported only by witness statements or by reports without underlying primary documentation. The Panel, in the observance of due process and by the issue of procedural orders to claimants, has on occasion requested further evidence from the claimants in order to ascertain the degree of destruction of records with a view to assessing the evidence as a whole.

B. The procedures adopted by the Panel to verify and value the first instalment claims

109. The principal tasks of the Panel are to assess the evidence with a view to determining whether the claimed loss or damage has in fact occurred and, in light of that determination, to assess the amount of compensation to be recommended in respect thereof.

110. In carrying out these tasks, one of the prime objectives of the Panel is to ensure consistency in the examination of the material and the resulting recommendations. This cannot be achieved other than by a systematic approach rigorously pursued in accordance with the requirements of the Rules. For this purpose the Panel has established three series of steps.

111. The first is a general verification and valuation programme applicable to all claims. This sets out procedures for the verification and valuation of the claims, including an initial assessment of the character and probative value of all the evidence originally submitted in support of each claim.

/...

112. The second series of steps comprises specific verification and valuation programmes. These set out more detailed procedures for certain loss types, namely, contract, real property and tangible property losses. They include the identification of particular documents needed to establish the existence and terms of contracts and the title and character of real and tangible property as well as those needed to value the losses claimed.

113. The third series of steps comprises supplemental verification and valuation programmes. These set out further detailed procedures for each loss element and were designed at an early stage of the review of a claim to meet its particular character. The programmes identify any additional evidence and other information beyond that originally submitted by the claimant which the Panel considers necessary for a proper review of the claim. This step has not been carried out if the loss element under review falls below the level of materiality which is described below.

114. In applying these programmes the Panel has systematically scrutinised the evidence according to its type, date, 34/ quality and quantity and has made consistent adjustments to reflect the extent to which the evidence is not sufficient.

115. Any attempt by the Panel to set out in detail in relation to the individual claims before it the precise manner in which it has found that the evidence is sufficient or not sufficient would involve it in a complex exposition of a very large volume of material and would not be feasible within the confines of a panel report. Moreover, the weighing of evidence is not an exact science but necessarily involves some exercise of judgement or discretion by the Panel. The Panel has, therefore, normally not gone beyond a statement of its conclusions in each case.

C. Evidential status of the reports of the claimants' accountants and engineers

116. Each claim contains an accountant's report and a number of them contain an engineer's report, in all cases commissioned by the Government of Kuwait.

117. The accountant's reports include descriptions of the claimed losses, summaries of the valuation methodologies adopted and schedules showing the derivation of the amounts claimed.

118. The engineer's reports contain evaluations of the repair and restoration works, commenting on the extent to which the works were required to repair invasion-related damage, the scope of works including enhancements, the degree of documentary support for the work said to have been done, the avoidance of duplication within the "F3" claims and, where

contract interruption losses are claimed, a comparison of the work done under the pre-invasion and post-liberation contracts.

119. The Panel notes that all of the reports have been commissioned by the Government of Kuwait for the purpose of the submission of its claims to the Commission. They do not, therefore, constitute original or primary evidence, in contrast to, for example, written contracts, receipts and invoices. As such, the Panel has treated these accountant's and engineer's reports as supporting documents and not as primary evidence of the matters of fact asserted in them.

D. Materiality

120. The sheer bulk of the claims before the Panel obliged it to focus on those parts of the claims 35/ which carry a greater risk of significant overstatement. The line between these parts and others is called the "level of materiality", with those parts of the claims above the level of materiality being called "material" and those below it "not material".

121. The Panel has set the level of materiality at US$500,000. However, the Panel has reduced the level of materiality in the following cases:

(a) where it is necessary to ensure the examination in sufficient detail of at least 80 per cent of the total value of any loss element across the "F3" claims, the level of materiality has been reduced accordingly, but not below US$100,000;

(b) for claims with a value below US$5,000,000 (excluding interest, claims preparation costs and any other part of the claim that the Panel finds not to be a direct loss) the level of materiality has been reduced to 10 per cent of the total value of the claim, but not below US$100,000; and

(c) in exceptional instances in which the Panel has found it appropriate to do so.

122. The Panel has determined that the use of these materiality levels will ensure a detailed review of over 99 per cent of the principal claim amount of the "F3" claims. The Panel considers this to be a necessary and therefore suitable approach to achieving its objective: that is, properly to review the "F3" claims within the time allotted for that task.

123. While the general and (where relevant) specific verification and valuation programmes have been carried out in the review of all loss elements, a supplemental verification and valuation programme has been designed and followed only for material loss elements. Further, so far as the non-material loss elements are concerned, the Panel has not requested any documentation other than that originally submitted by the claimant. In

assessing the sufficiency of the evidence submitted in support of these loss elements, the Panel has regard to the fact that the claimant has not been requested to submit additional evidence and that to conclude that the evidence submitted is insufficient may unfairly penalise the claimant concerned. The Panel therefore assesses the sufficiency of the evidence in support of these loss elements in two stages; first, by applying the criteria described at paragraphs 114 and 115 above in the usual manner and, second, by adjusting its conclusions to reflect the average sufficiency of all the evidence submitted in support of the claim concerned and/or the relevant loss element, as appropriate.

E. Reporting on the verification and valuation of the first instalment claims

124. The expert consultants have provided the Panel with comprehensive reports on the results of the verification and valuation programmes for the first instalment claims, indicating their opinions as to the extent that each is supported by the evidence and the value to be given to each. The Panel has considered these reports in detail prior to coming to its conclusions and recommendations. These are set out in section VI below. The Panel is satisfied that each of the recommendations which it has made is reasonable in all the circumstances.

125. In explaining in any given case why a claim or part thereof has been reduced or rejected the Panel has sometimes used one or more of the following shorthand expressions, the weight of which will necessarily vary from case to case:

(a) "method of valuation" means that the amount claimed has been reduced because the valuation method used by the Government of Kuwait is not appropriate under the circumstances of the loss or the Panel has used an alternative method of valuation (such as the use of book value rather than the use of depreciated replacement cost);

(b) "overstatement" is used where an error of fact or of calculation is discovered;

(c) "inadequate procurement process" is used where the Government has failed to use an appropriate procurement process to ensure that the loss is kept to a minimum. In many cases, the appropriate procurement process would involve resort to competitive tendering, but such procedures may not be appropriate in the context of urgent or emergency repair work, for example;

(d) "enhancement" is used where the Government in replacing damaged or lost items has obtained an asset that is better than the one previously used, but has failed to give adequate credit for the improvement;

(e) "inadequate accounting for depreciation" is used where the Government has not properly considered the age or the remaining useful life of the asset as at the date of the loss or has used an inappropriate rate of depreciation;

(f) "inadequate accounting for residual value" is used where an amount is likely to be received from the disposal of an asset at the end of its useful life, and that amount is not adequately taken into account;

(g) "saved expenses" is used where the Government has not incurred expenses that it would ordinarily have incurred had Iraq's invasion and occupation of Kuwait not occurred, or has incurred reduced expenses as a result of the invasion and occupation; and the claim has not been correspondingly reduced. The matter is more fully discussed at paragraph 87 above; and

(h) "insufficient evidence" is used where the Panel considers that the claim must be reduced or rejected because it is not supported by sufficient evidence. 36/

VI. THE FIRST INSTALMENT CLAIMS

A. Introduction

126. The Panel now turns to consider separately each of the first instalment claims. In this section the Panel sets out its consideration of the asserted losses and presents its recommendations for compensation in respect of them.

127. The Panel has proceeded to review the first instalment claims using amounts rounded to the nearest US$1,000. Therefore, all recommended compensation amounts are presented in multiples of US$1,000, except where the Panel recommends payment in the full amount claimed.

B. Public Authority for Youth and Sports

Government Claim No. 18, UNCC Claim No. 5000022

Table 2. Summary Table for Public Authority for Youth and Sports

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Real property	3,748,423	1,516,000	128-130
Other tangible property	4,325,505	2,254,000	128-130
Total	8,073,928	3,770,000	
Interest	1,282,960		

1. Property losses

(a) Real property - US$3,748,423

(b) Other tangible property - US$4,325,505

Scoreboards US$2,530,862
Buses US$1,628,369
Water coolers US$166,274

128. The Public Authority for Youth and Sports ("PAYS") is responsible for promoting the development of the youth of Kuwait and of physical fitness in general. PAYS asserts that all of its sports and youth clubs, federations, centres and facilities suffered damage during Iraq's invasion and occupation of Kuwait. PAYS also seeks compensation for the cost of four scoreboards, 167 buses and 255 water coolers purchased to replace those lost during the occupation period.

129. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses, and insufficient evidence.

130. Accordingly, the Panel recommends compensation in the amount of US$1,516,000 out of the US$3,748,423 claimed for real property and US$2,254,000 out of the US$4,325,505 claimed for other tangible property.

C. Ministry of Finance - Kuwait Emergency Reconstruction Office

Government Claim No. 2, UNCC Claim No. 5000038

Table 3. Summary Table for Ministry of Finance - Kuwait Emergency Reconstruction Office

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Real property			
a) Hospitals and clinics	19,557,400	15,355,000	139-141
b) Water distribution system	9,421,366	8,316,000	142-144
c) Emergency road repairs	13,927,023	12,601,000	145-147
d) Electrical power network	39,939,492	35,292,000	148-150
e) Airports	63,673,177	48,169,000	151-153
f) Schools	53,304,590	37,877,000	154-156
g) The National Assembly	61,851,211	39,080,000	157-160
h) Other Government facilities	56,126,287	37,236,000	161-163
i) Airlift of fire-fighting equipment for oil well fires	19,389,711	17,936,000	164-167
j) US Army Corps of Engineers labour costs	44,435,393	41,103,000	168-169
Sub-total	381,625,650	292,965,000	
Other tangible property	7,562,423	7,898,000	170-173
Total	389,188,073	300,863,000	
Interest	61,843,584		

1. Real property - US$381,625,650

131. This claim is for the costs incurred by the Government of Kuwait in relation to the Kuwait Emergency Reconstruction Office ("KERO"), a reconstruction programme set up in early 1991 and managed by the U.S. Army Corps of Engineers (the "Corps"). The purpose of KERO was to perform emergency repairs to Kuwait's infrastructure as soon as possible after the liberation of Kuwait.

132. Work under the programme commenced on 1 March 1991 and concentrated on hospitals and clinics, the water distribution system (including the sewerage system), roads, the electrical power network, airports, schools, and other facilities of the Government of Kuwait (including the National Assembly, the seat of Kuwait's parliament). Work under the programme was substantially complete by August 1992. Costs were also incurred and are claimed by KERO for the air lift of equipment to fight the oil well fires. 37/

133. The Corps acted as the project manager for KERO. The repair work itself was performed by independent contractors pursuant to agreements made

/...

with the Corps. The Government of Kuwait paid the Corps the amount charged to the Corps by these independent contractors together with the expenses incurred by the Corps in managing the project. These latter expenses included the cost of the labour provided by the Corps to produce reports assessing the damage to be repaired and to supervise the repairs.

134. Most of the repair work was performed by eight contractors. These contractors in turn engaged a large number of subcontractors. Given the size of the programme and the number of contractors and subcontractors involved, a significant volume of paperwork was produced. Not all of this paperwork was submitted with the statement of claim. The majority of the paperwork is, however, held by the Corps at its offices in Winchester, Virginia, United States of America. As part of its verification and valuation of the claim, the Panel instructed the secretariat and the expert consultants to inspect these documents. During their mission to the Corps' offices from 16 March 1999 to 26 March 1999, the secretariat and the expert consultants inspected the contents of 170 boxes of relevant documents, and interviewed Corps personnel involved in the programme and others with in depth knowledge of the statutory framework for the Corps' operations.

135. The Panel finds that all of the losses claimed, being for real and tangible property losses, are compensable for the reasons set out in paragraphs 26 to 30 above, subject to verification and valuation. The Panel finds that certain repairs, which were temporary in nature and were followed by more permanent repairs, were all reasonably necessary in the circumstances and, as set out in paragraph 73, are compensable in addition to the permanent repairs.

136. In valuing this claim, the Panel has first considered the reasonableness of the selection of the Corps as project manager. The Panel considers that at the time of the selection of the Corps there were a number of organizations with the resources to undertake a project in the nature of KERO. However, the Panel is satisfied that the use of the Corps did not result in a higher price to the Government than would have been the case using another of the suitable organizations, largely because any other organization would undoubtedly have incorporated an additional premium into its pricing to reflect the risks attached to the project. Further, these organizations may not have received the same level of co-operation and assistance with the task of ordnance clearance that was accorded to the Corps by the U.S. Army. The Panel has duly considered Iraq's argument in its response to Procedural Order 1 that it was unfair for a "belligerent" to act as contractor to the Government. However, the Panel cannot identify any meaningful element of unfairness to Iraq and does not accept this argument. The selection of the Corps as project manager was reasonable in all the circumstances.

137. The Panel has considered the method adopted by the Corps for selecting the contractors to undertake the repair work. In accordance with the duty of mitigation, the work must be shown to have been carried out at the lowest reasonable cost in all the circumstances. Obtaining the lowest reasonable cost usually entails the use of a competitive tendering procedure and the selection of the lowest acceptable bid. The eight contractors set out in paragraph 134 above were initially engaged pursuant to "letter contracts" with the Corps. These contracts covered the contractors' costs of setting up in Kuwait but promised only a limited amount of work. Subsequent work was undertaken pursuant to "task orders". For almost all the work performed by KERO, these "task orders" were awarded using less than full and open competition. On most occasions there was no bidding between the eight contractors. Rather, direct negotiations would occur between the Corps and one of the eight contractors.

138. The Panel recognises that the urgency of many of the needed works was such that to have required the Government to implement competitive tendering procedures would have involved an unacceptable delay in carrying out such works. But this was not the case for all of the works performed by KERO. To determine whether the contracting procedure adopted was reasonable in all the circumstances, the Panel has applied a test which gives weight to the importance of the facility to be repaired and the immediacy of the need for it. The test asks whether the works were of such urgency that resort to competitive procurement procedures could not reasonably be required in the circumstances. The Panel has applied this test to each of the specific projects undertaken. If it considers that a competitive procurement procedure 38/ should have been adopted but was not, then it applies a deduction equal to the difference between the price paid for the project and the price that it calculates would have been paid if the competitive procurement procedure had been adopted.

(a) Hospitals and clinics - US$19,557,400

139. KERO's repairs to hospitals and clinics concentrated on utility systems, air conditioning, water lines, elevators, lighting, boilers, plumbing, broken glass, and the general clean-up of debris.

140. The Panel finds that most repairs to the hospitals and clinics were undertaken pursuant to procurement procedures that were reasonable in the circumstances. The Panel finds, however, that competitive procurement procedures could have been adopted for the general cosmetic repairs to a number of buildings and for some work to administrative offices of the Ministry of Health. As such procedures were not adopted, a deduction has been made for the excess costs incurred. Further adjustments should be made for inadequate accounting for depreciation and for insufficient evidence.

141. Accordingly, the Panel recommends compensation in the amount of US$15,355,000 out of the US$19,557,400 claimed for hospitals and clinics.

(b) Water distribution system - US$9,421,366

142. Following liberation, KERO engaged in repairs to damaged water treatment facilities and water and sewer lines to ensure the availability of a basic water supply and water treatment capability.

143. The Panel finds that the procurement procedures used by the Corps were reasonable in the circumstances. The evidence shows, however, that adjustments should be made for inadequate accounting for depreciation (in relation to one contract for the replacement of water pipes and extensive repairs to water treatment facilities) and for insufficient evidence.

144. Accordingly, the Panel recommends compensation in the amount of US$8,316,000 out of the US$9,421,366 claimed for repairs to the water distribution system.

(c) Emergency road repairs - US$13,927,023

145. KERO undertook preliminary repairs to Kuwait's road network pursuant to more than 100 "task orders". These covered repair of bomb craters, removal of abandoned vehicles, repair of bridges, car parks and footpaths and repair and replacement of traffic signs, guard-rails and medians.

146. The Panel finds that competitive procurement procedures could have been adopted in relation to four "task orders" concerning repairs to the car parks and pavements at the National Guard and United Nations buildings. The Panel has made a deduction for the excess costs incurred because such procedures were not adopted. Further adjustments should be made for inadequate accounting for depreciation (in relation to replaced traffic signs, guard rails and medians) and for insufficient evidence.

147. In light of the above, the Panel recommends compensation in the amount of US$12,601,000 out of the US$13,927,023 claimed for emergency road repairs.

(d) Electrical power network - US$39,939,492

148. KERO performed emergency repairs to the electrical power system in Kuwait. This included the repair of substations, overhead transmission lines and underground cables.

149. The Panel finds that the procurement procedures used by the Corps were reasonable in the circumstances but that adjustments should be made for inadequate accounting for depreciation (in relation to the replacement of overhead transmission lines) and for insufficient evidence.

150. In light of the above, the Panel recommends compensation in the amount of US$35,292,000 out of the US$39,939,492 claimed for electrical power network.

(e) Airports - US$63,673,177

151. KERO undertook substantial repairs to the Kuwait International Airport including the repair of runways, airport terminals, hangars and a flight training centre. It also performed some repairs to two air bases.

152. The Panel finds that most of the repairs to the Kuwait International Airport were undertaken pursuant to procurement procedures that were reasonable in the circumstances. However, competitive procurement procedures could have been adopted in relation to the repairs to the flight training centre. As such procedures were not adopted, a deduction has been made for the excess costs incurred. Further adjustments should be made for inadequate accounting for depreciation (in relation to the various buildings that were repaired) and for insufficient evidence.

153. In light of the above, the Panel recommends compensation in the amount of US$48,169,000 out of the US$63,673,177 claimed for the repair of airports.

(f) Schools - US$53,304,590

154. KERO undertook substantial repair work to 197 schools. Some of this work was required to enable a sufficient number of schools to open in the autumn of 1991. A small portion of the cost was incurred in removing unexploded ordnance from school grounds.

155. The Panel finds that the procurement procedures used by the Corps were reasonable in the circumstances. Approximately 40 per cent of the repairs by value were for substantial and permanent repairs such as the replacement of air conditioning systems, the rewiring of electrical circuits and plumbing and decoration repairs. The Panel finds that adjustments should be made for inadequate accounting for depreciation and for insufficient evidence.

156. In light of the above, the Panel recommends compensation in the amount of US$37,877,000 out of the US$53,304,590 claimed for repair to schools.

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(g) The National Assembly - US$61,851,211

157. The National Assembly is the seat of Kuwait's Parliament. It suffered significant damage as a result of Iraq's invasion and occupation of Kuwait and was totally rebuilt pursuant to the KERO programme. The majority of the repairs were completed between February 1992 and April 1993.

158. The claim in relation to the National Assembly included an amount of US$2,099,443 for the replacement of carpet which should have been classified as a loss of "other tangible property". Further, the claim for "other tangible property" included an amount of US$635,000 for certain real property repairs which should have been included under that loss type. The Panel has thus made a deduction of US$1,464,000 (being US$2,099,443 less US$635,000, rounded to the nearest thousand United States dollars) from the claim in relation to the National Assembly and transferred this amount to the claim for the loss of "other tangible property" set out in paragraph 170 below.

159. The Panel finds that competitive procurement procedures could have been adopted for all of the works on the National Assembly except for the initial clearing of rubble and debris undertaken for safety reasons. The Panel notes the importance to the Government of restoring the National Assembly at the earliest possible time but it does not find that the works were required so urgently as to warrant the omission of competitive tendering procedures. The Panel further notes that the works were delayed pending design finalisation, during which substantial revisions were made to the scheme initially proposed for the repair of the National Assembly. These revisions were made in order to reduce the repair costs. The Panel finds that competitive tendering procedures should have been implemented during this period of delay and has therefore applied a deduction for the excess costs incurred. Further adjustments should be made for overstatement in relation to the design costs, inadequate accounting for depreciation, enhancements, and for insufficient evidence.

160. In light of the above, the Panel recommends compensation in the amount of US$39,080,000 out of the US$61,851,211 claimed for repairs to the National Assembly.

(h) Other Government facilities - US$56,126,287

161. KERO undertook repairs to a number of other facilities of the Government of Kuwait including Ministry buildings, fire stations, police stations, and National Guard facilities. It also constructed temporary offices for the Government of Kuwait at Bayan Palace.

162. The Panel finds that the repairs to the Ministry of Planning buildings, the Ministry of Justice buildings, the Ministry of Communications facilities, the Social Affairs institute, orphanage and centre for the handicapped and the fire and police stations, together with the construction of the temporary offices at Bayan Palace, were undertaken pursuant to procurement procedures that were reasonable in the prevailing circumstances of urgency. However, the remaining repairs could have been postponed while competitive procurement procedures were used. The Panel has, therefore, applied a deduction for the relevant excess costs. Further adjustments should be made for inadequate accounting for depreciation and for insufficient evidence.

163. In light of the above, the Panel recommends compensation in the amount of US$37,236,000 out of the US$56,126,287 claimed for repairs to other Government of Kuwait facilities.

(i) Airlift of fire-fighting equipment for oil well fires - US$19,389,711

164. The Corps charged the Government of Kuwait the cost of transporting fire-fighting equipment to Kuwait to assist in fighting the oil well fires. The equipment was transported by air by the U.S. Army's Military Air Command in the weeks following liberation.

165. The Panel finds, in common with other panels, that the reasonable cost of transporting the fire-fighting equipment to Kuwait is compensable. 39/

166. The Panel finds that the procurement procedures used by the Corps were reasonable in the circumstances but that an adjustment should be made for insufficient evidence.

167. In light of the above, the Panel recommends compensation in the amount of US$17,936,000 out of the US$19,389,711 claimed for the airlift of fire-fighting equipment.

(j) U.S. Army Corps of Engineers labour costs for damage surveys and supervision of repairs and cost of office support and logistics - US$44,435,393

168. The Corps charged the Government of Kuwait on a cost basis for its labour and other costs in managing the KERO programme. As set out in paragraph 136 above, the Panel finds that the selection of the Corps as project manager was reasonable. Further, the Panel finds that the costs incurred by the Corps were reasonable and would not have been reduced if the competitive procurement procedures set out above had been adopted.

However, the Panel finds that an adjustment should be made for insufficient evidence.

169. Accordingly, the Panel recommends compensation in the amount of US$41,103,000 out of the US$44,435,393 claimed for labour, office and logistics costs.

2. Other tangible property - US$7,562,423

170. KERO replaced furniture and fixtures lost from the National Assembly building. As set out above in paragraph 158 above, the Panel has applied a notional US$1,464,000 increase to this loss type to reflect certain reclassifications in the claim as presented.

171. The Panel has not found it necessary to decide whether competitive procurement procedures could have been adopted in relation to the purchase of the replacement furniture and fixtures. This is because the Panel finds that, for some of the purchases, the adoption of competitive tendering procedures would not have reduced costs and, for the remaining purchases, the use of competitive tendering procedures would not have been possible because the items could only be obtained from specific suppliers.

172. The Panel finds that an adjustment should be made for insufficient evidence.

173. In light of the above, the Panel recommends compensation in the amount of US$7,898,000 compared with the US$7,562,423 claimed for other tangible property losses. This recommendation includes the addition to the amount claimed to take account of the reclassifications set out in paragraphs 158 and 170 above.

D. Amiri Diwan

Government Claim No. 7, UNCC Claim No. 5000043

Table 4. Summary Table for Amiri Diwan

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Other tangible property			
a) Rare books and documents	842,368	460,000	174-177
b) Office equipment and furniture	1,564,674	757,000	178-181
c) Prospective gifts	3,663,965	2,565,000	182-184
d) Vehicles	1,320,283	940,000	185-187
Total	7,391,290	4,722,000	
Interest	1,175,080		

1. Other tangible property - US$7,391,290

(a) Rare books and documents - US$842,368

174. The Amiri Diwan comprises the governing offices of Kuwait's Head of State, the Amir. The Amiri Diwan seeks compensation for rare books and documents destroyed in its Historic Documents Centre. The loss is valued using a combination of approaches, including computations based on historic and replacement costs.

175. The Panel finds that adjustments should be made for an inadequate procurement process, method of valuation, overstatement (including significant overstatement in the claimed cost of photocopying documents), and insufficient evidence.

176. In light of the above, the Panel recommends compensation in the amount of US$460,000 out of the US$842,368 claimed for rare books and documents.

177. The Amiri Diwan also seeks an order that Iraq return certain priceless items such as moon rocks and specially bound Korans missing after liberation. While recognising the importance of such items to the Government of Kuwait, the Panel finds that it does not have the power to make such an order.

(b) Office equipment and furniture - US$1,564,674

178. The Amiri Diwan seeks compensation for office equipment and furniture, such as computers, telecommunications equipment, photocopiers, desks, safes and carpeting, taken or destroyed as a result of the burning and looting of the Amiri Diwan's offices in Bayan Palace.

179. Except for the telecommunications equipment, the amounts claimed fall below the level of materiality adopted by the Panel and, therefore, as noted above, the Panel has neither requested nor reviewed any evidence other than that submitted by the Amiri Diwan. The Panel finds that adjustments should be made for inadequate accounting for depreciation, an inadequate procurement process, enhancement, inadequate accounting for residual value, saved expenses, and insufficient evidence.

180. As to the telecommunications equipment, the Panel finds that the Amiri Diwan overstated the deduction required for depreciation. The Panel has re-calculated the depreciation using a residual value of 15 per cent and has made a notional addition to the amount claimed. On the other hand, adjustments should be made for an inadequate procurement process, enhancement, and for insufficient evidence.

181. In light of the above, the Panel recommends compensation in the amount of US$757,000 out of the US$1,564,674 claimed for office equipment and furniture.

(c) Prospective gifts - US$3,663,965

182. The Amiri Diwan also seeks compensation for the loss of a number of items intended as gifts for presentation to visitors, as well as a number of medallions and sashes intended for presentation as awards by the Government of Kuwait. The loss is valued on the basis of the historic cost of the items.

183. As part of the verification and valuation programmes applicable to this loss element, the Panel considers, *inter alia*, whether there has been adequate accounting for depreciation, whether there has been any enhancement and whether adequate procurement procedures have been applied. In this case, a number of the lost items were designed and manufactured by one supplier exclusively for the Amiri Diwan and this supplier holds the copyright for the designs. Accordingly, the Panel finds that no adjustments in respect of depreciation, enhancement or procurement procedures for the supply of replacements are appropriate. The Panel

finds, however, that an adjustment should be made for insufficient evidence.

184. Accordingly, the Panel recommends compensation in the amount of US$2,565,000 out of the US$3,663,965 claimed for prospective gifts.

(d) Vehicles - US$1,320,283

185. The Amiri Diwan seeks compensation for the loss of a number of vehicles, including 10 armoured vehicles.

186. Some adjustments need to be made to reflect the fact that one of the lost vehicles has been claimed for twice, for the enhancement of the armoured vehicles, for an inadequate procurement process (for the replacement of the armoured vehicles), saved expenses (on operating and maintenance), and for insufficient evidence.

187. The Panel therefore recommends compensation in the amount of US$940,000 out of the US$1,320,283 claimed for vehicles.

E. Ministry of Finance

Government Claim No. 14, UNCC Claim No. 5000112

Table 5. Summary Table for Ministry of Finance

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Support payments to Kuwaitis outside Kuwait	792,176,098	707,800,000	193-202
Increased operating expenses of Kuwaiti embassies	144,394,897	18,200,000	203-211
Total	936,570,995	726,000,000	
Interest	148,824,520		

1. Introduction

188. The Ministry of Finance was responsible for the administration of payments of relief made to Kuwaitis who left Kuwait after Iraq's invasion and occupation of Kuwait. The Ministry claims sums said to have been paid to approximately 400,000 Kuwaitis for living, housing and other expenses in 61 countries around the world from August 1990 until May 1991.

189. The Council of Ministers of the Government of Kuwait issued two basic decrees governing such payments: one for Kuwaitis in the GCC states and the other for Kuwaitis in other countries. The decrees set out the amounts of support to be paid after investigations by representatives of the Council of Ministers. It is asserted that the allowances 40/ were distributed by Kuwaiti embassies in the relevant countries. Other expenses, such as medical and educational fees, were distributed as need arose. Certain payments distributed during the payment period in respect of medical treatment and education outside Kuwait are not claimed as the Ministry accepts that they would have been incurred even without Iraq's invasion and occupation of Kuwait.

190. The Panel finds that the amounts paid by the Government of Kuwait to those of its citizens who left Kuwait and had no means of support are compensable under paragraphs 34(b) and 36 of decision 7 subject to verification and valuation. As set out above, the latter paragraph provides that governments can recover for payments made or relief provided by them for losses covered by any of the criteria adopted by the Governing Council including, as in this case, losses due to an inability to return to Kuwait. The Panel finds that the compensable period for payments under the programme is from 2 August 1990 until 31 May 1991. The compensable period includes the three months following liberation because, until the critical work needed to restore hospitals, public water supplies, electricity and other essential services in Kuwait was completed, it was not safe for the

population of Kuwait to return in large numbers. Accordingly, the Panel finds that it was reasonable for the support payments to have continued until 31 May 1991.

191. One item of the claim relates to the purchase of gas masks for Kuwaitis living in Saudi Arabia. As the Panel adopts the "E2" panel's finding that Iraq made serious and credible threats of military action against the territory of Saudi Arabia, 41/ the Panel finds that such expenses are compensable under paragraph 34(a) of decision 7.

192. The claim, as presented in the Form F, is for US$936,570,995, before interest, comprising two loss types: "payment or relief to others" for which US$792,176,098 is claimed, and "public service expenditures" of US$144,394,897. The Government of Kuwait has provided information to the Panel which indicated that the amount spent under the loss type of "public service expenditures" was, in fact, US$57,700,000 and the amount under the loss type of "payment or relief to others" may have been in excess of the amount claimed in the Form F. The Government also stated that, despite its revisions to the amounts spent, it did not intend to make an overall change to the amounts claimed. The Panel is, therefore, limited in its examination of the support payments to the sum actually claimed. In view of the information provided, the Panel noted, and took into account in its verification and valuation of the claim:

(a) that the amount claimed under the loss type of "payment or relief to others" may have been understated; and

(b) the revision to the amount claimed under the loss type of "public service expenditures".

2. Payment or relief to others - US$792,176,098

(a) Support payments to Kuwaitis outside Kuwait - US$792,176,098

193. The Panel now turns to the quantum of compensation to be recommended under the loss type of "payment or relief to others". Given the number of beneficiaries of the support payments, the geographical spread of the Kuwaitis outside Kuwait and the process by which payments were disbursed, a very large volume of documentation was available in relation to the claim, although only a limited sample was submitted as evidence.

194. The Panel sought and received additional information as to, among other things, the controls used to ensure the proper distribution of relief payments, the relevance of budgeted figures of which use had been made and the basis for the calculation of the claim, including some evidence of the

trail connecting the figures claimed with the actual payment of relief to individuals.

195. However, it emerged from this additional information that there were no documents which had been arranged for review and collated so as to support the figures appearing in relation to the six embassies which generated the largest claims. The Panel therefore addressed to the Ministry a note verbale dated 31 March 1999 seeking an explanation as to the basis for the preparation of the claim and of the lack of a documentary trail. The Government's response set out the difficulties experienced in preparing the claim, explained the limited nature of the evidence relied upon, and disclosed that it was unable to substantiate the amounts drawn from the supporting documents when the claim was originally prepared.

196. This led to a mission by the secretariat and the expert consultants to Kuwait from 4 to 5 May 1999 during which several dozen boxes of materials were inspected and discussions were held with representatives of the Government of Kuwait and its consultants. Although several hundred files of documents were collected, the mission revealed that there was no material to bridge the gap between the documents on which the claim was based and the actual use of the funds claimed.

197. Ultimately, reliance is placed by the Government of Kuwait on:

(a) Kuwait Investment Office ("KIO") transfer memoranda which record instructions for the transfer of funds from the KIO in London to the individual embassies which distributed the support payments; and

(b) monthly statements from embassies as to expenditures incurred or budgeted.

198. Due to the size of the claim and the number of embassies involved, the Panel selected for closer scrutiny only those embassies which among them ensured coverage of over 90 per cent of the support payments claimed.

199. While it is clear that KIO sent large sums to Kuwaiti embassies world-wide and a large proportion of this was disbursed in the payment of relief to Kuwaiti evacuees, the absence of a comprehensive documentary trail calls for some adjustments to the claimed amount. These adjustments are of two types.

200. First, specific adjustment is required because of the use of inappropriate exchange rates. In setting out the cost of the support payment programme for Egypt, the Government of Kuwait used a standard rate of two Egyptian pounds ("LE") to the US dollar for the months of August 1990 to January 1991, and a market based rate thereafter. The use of the standard rate inflates this part of the claim by US$16,500,000 as the

market rate for the Egyptian pound against the US dollar moved from LE 2.69 to LE 2.92 during the relevant period. The Panel has therefore applied a reduction of US$16,500,000 so as to correct the overstatement.

201. Second, a more general adjustment is required so as to reflect the evidentiary gaps in the claim that the Government itself acknowledges. Ordinarily, the Panel's approach would have been to reduce the claim significantly so as to reflect the limitations of the evidence provided. However, the Panel in the particular circumstances of this claim finds that a significant adjustment of this kind cannot be justified, notwithstanding that the trail of evidence is not complete. This is so because of the nature of the relief effort which was mounted without pre-existing support services for such operations, and the mass of evidence available to show that substantial amounts were in fact expended on the relief programme that may have exceeded the amounts claimed. Nonetheless, the Panel has made an adjustment for insufficient evidence.

202. In light of the above, the Panel recommends compensation in the amount of US$707,800,000 out of the US$792,176,098 claimed.

3. Public service expenditures - US$144,394,897

(a) Increased operating expenses of Kuwaiti embassies - US$144,394,897

203. The Government of Kuwait claims the increase in the operating expenses of its various embassies said to be attributable to the administration of the support payment programme and hence to Iraq's invasion and occupation of Kuwait.

204. The Panel finds that the claim for increased embassy operating costs incurred in running such an extensive support payments programme is, in principle, compensable under paragraph 34(b) or paragraph 36 of decision 7. The Government of Kuwait performed its necessary and legitimate function of ensuring the safety and well-being of its citizens who were abroad as a result of Iraq's invasion and occupation of Kuwait and, in so doing, incurred additional expenses.

205. The Panel finds that the period in respect of which compensation is to be awarded is the same period as that for the support payments claim, noted above at paragraph 190, that is, the period from 2 August 1990 to 31 May 1991.

206. The Panel encountered difficulties in valuing this loss element as insufficient information was available on an individual embassy basis as to the additional costs incurred and as to what additional activities were

undertaken by each embassy. A large proportion of the expenditure included in the overall amount claimed was also described as "miscellaneous".

207. The Panel determines that amounts claimed in respect of additional embassy operating expenses are reasonable, other than those of the embassy in the United States of America, as set out below.

208. The Panel has proceeded by calculating the proportion of costs to relief paid by a sample of embassies and determining from that proportion an average percentage of expenses to be awarded in respect of the embassy costs. In the case of the embassy in the United States of America, it was not possible to determine the relationship between increased embassy costs and the level of support payments. The Panel therefore finds that an adjustment is necessary to remove from the amount claimed in respect of the embassy in the United States of America that part of its additional operating expenses which was not demonstrably related to the support programme.

209. A specific adjustment is also required in relation to the embassy in Egypt. Included within the figure provided for that embassy's costs is an item of US$17,900,000 which represents an estimate of transfers to other embassies and Ministries. During the mission to Kuwait, the Government of Kuwait was asked whether the transfers to other embassies may have been to fund those embassies' support payments and operating expenses so that the item could represent a duplication. The Government accepted that this might be the case. In view of the absence of any documentary support for the use of the funds in question, the Panel considers it appropriate to deduct the sum of US$17,900,000 from the amount claimed.

210. Additionally, the Panel finds that an adjustment should be made for insufficient evidence and that the special considerations noted at paragraph 201 above are not relevant to this loss element.

211. In light of the above, the Panel recommends compensation in the amount of US$18,200,000 out of the revised claim amount of US$57,700,000. 42/

F. Ministry of Interior

Government Claim No. 20, UNCC Claim No. 5000137

Table 6. Summary Table for Ministry of Interior

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Other tangible property	18,288,377	6,692,000	212-214
Relief paid to employees	274,343,423	96,431,000	215-219
Total	292,631,800	103,123,000	
Interest	46,505,560		

1. Other tangible property - US$18,288,377

(a) Vehicles - US$18,288,377

212. The Ministry of Interior (the "Ministry") provides all police and law enforcement protection for the Government of Kuwait and for those purposes before the invasion had a number of vehicles, including police cars, ambulances, tow trucks and armoured vehicles. The Ministry is also responsible for the training of law enforcement personnel in the Police Academy.

213. The Panel examined a list of the vehicles owned by the Ministry as at 4 January 1990. The Panel found that a number of vehicles set out in the statement of claim did not appear on that list and that some vehicles were incorrectly classified. Adjustments were made for overstatement, for inadequate accounting for depreciation, and for substantial saved expenses in respect of running and maintenance costs.

214. In light of the above, the Panel recommends compensation in the amount of US$6,692,000 out of the US$18,288,377 claimed for vehicles.

2. Payment or relief to others - US$274,343,423

(a) Relief paid to employees - US$274,343,423

215. The Ministry of Interior seeks compensation in the amount of US$274,343,423 for relief paid to employees.

216. The response of the Government of Kuwait to the Panel's questions regarding the Social Security Fund states that the amount claimed is based upon the employees' salaries before deduction of the social security contribution. The Panel accepts this statement.

217. The Panel, as set out above at paragraph 36, accepts the compensability of such relief paid to employees subject to the percentage adjustment set out above at paragraph 48, and the deduction of the employees' social security contribution.

218. The Panel finds that an adjustment should also be made for insufficient evidence.

219. In light of the above, the Panel recommends compensation in the amount of US$96,431,000 out of the US$274,343,423 claimed.

G. Kuwait Fund for Arab Economic Development

Government Claim No. 21, UNCC Claim No. 5000138

Table 7. Summary Table for Kuwait Fund for Arab Economic Development

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Business transaction or course of dealing			
a) Loss of investment income	3,176,726	0	220-225
b) Expenses of operating in London	2,007,509	1,633,000	226-231
Sub-total	5,184,235	1,633,000	
Real property	235,829	87,000	232-233
Other tangible property	450,437	71,000	232-233
Payment or relief to others			
a) Relief paid to employees	2,534,228	842,000	234-238
b) Relocation expenses	77,095	61,000	239-244
c) Temporary housing	42,101	17,000	239-244
Sub-total	2,653,424	920,000	
Pre-paid rent	739,926	739,926	245-247
Total	9,263,851	3,450,926	
Interest	1,472,040		

1. Business transaction or course of dealing - US$5,184,235

(a) Loss of investment income - US$3,176,726

220. The Kuwait Fund for Arab Economic Development (the "Fund") is an agency of the Government of Kuwait created to provide financial and technical assistance programmes to developing countries ("borrowers"). Prior to Iraq's invasion of Kuwait it operated from offices in Kuwait City. In September 1990, the Fund moved its operations to temporary offices in London.

221. The Fund derives income from two sources:

(a) income from the investment of its surplus funds; and

(b) deposit interest earned on repaid loans (principal and interest) ("deposit interest income").

222. During the period of occupation, notwithstanding the continuance of the operations of the Fund in London, most borrowers withheld repayments because, the Government of Kuwait asserts, they were uncertain about the /...

fate of Kuwait and were unsure whether the payments forwarded to Kuwait would be credited and properly processed.

223. The Fund seeks compensation for loss of deposit interest income calculated by:

(a) multiplying the unpaid principal amount by the number of days between 2 August 1990 and 26 February 1991 (or the actual date of payment if earlier) that the loan was delinquent; and

(b) applying thereto an interest rate of 7.5 per cent per annum which, the Fund asserts, is a conservative estimate of the interest that could have been earned.

224. The Panel is satisfied that Iraq's invasion and occupation of Kuwait may have caused some uncertainty to borrowers. The Fund has stated that after it resumed operations in London, new deposit facilities were established, and borrowers were contacted and updated on the status of the Fund. The Panel finds therefore that the uncertainty of the borrowers was, or should have been, dispelled. No evidence has been provided that borrowers in default were sent repeated, or any, specific demands for repayment or that there was any impediment to steps being taken to collect the loans. Accordingly, the Panel is not satisfied that the invasion made it impossible for the borrowers to repay the loans nor that it was the direct cause of the loss of the Fund's deposit interest income.

225. Accordingly, the Panel does not recommend any compensation for this loss element.

(b) Expenses of operating in London - US$2,007,509

226. The Fund asserts that it incurred a variety of expenses on account of its relocation in London from September 1990 until May 1991. The Fund selected London for its operations because the Government of the United Kingdom made special arrangements to lift the freeze on some of the Fund's assets and business premises were readily available there. The Fund seeks compensation for the full cost of operating in London during the period, including additional office expenses (being office rent, consultancy expenses, fees paid for monitoring of the Fund's asset portfolio, the cost of installation of telephone lines and rent paid for office furniture and computers) and employee-related expenses (such as additional salaries, rent allowances paid and cars provided to employees while in London).

227. The Panel finds, as set out above at paragraph 79, that the full cost of temporarily conducting operations outside Kuwait is compensable, subject to deductions for expenses that would ordinarily have been incurred by the

Fund in its operations in Kuwait and which have been saved. The Panel also finds it reasonable that the Fund selected London as the place of relocation and stayed there for the period that it did.

228. The Panel recommends that this claim for additional office expenses (as described above) be paid in full.

229. As to the claim for additional employee-related expenses, the Panel issued an interrogatory seeking information as to the basis of calculation of additional salaries and rent allowances paid to the Fund's employees while in London. The Fund responded that the increased amounts had been paid in respect of additional cost of living and rental allowances.

230. The evidence presented and the response to the interrogatory has revealed double counting in respect of one employee's salary for one month, and that inappropriate dates for the calculation of the rates of exchange as between US$, KD, and pounds sterling were used. Following an analysis of the relative costs of living in Kuwait and in London, based upon the United Nations' system of expatriate and overseas allowances, some adjustment has been made to the claim for additional salaries. The Panel also finds that the claim for car costs should be adjusted so as to reflect expenses that the Fund would ordinarily have incurred in Kuwait.

231. The Panel accordingly recommends compensation in the amount of US$1,633,000 out of the US$2,007,509 claimed for the expenses of operating in London.

2. Property losses

(a) Real property (office premises) - US$235,829

(b) Other tangible property - US$450,437

Office furniture	US$103,798
Cars	US$29,641
Interior furnishings of villas	US$316,998

232. The Fund also seeks compensation for property losses. The amounts claimed fall below the level of materiality adopted by the Panel and, therefore, as noted above, the Panel has neither requested nor reviewed any evidence other than that submitted by the Fund. The Panel finds that adjustments should be made for inadequate accounting for depreciation, an inadequate procurement process, enhancement, overstatement, saved expenses, and insufficient evidence.

233. The Panel therefore recommends compensation in the amount of US$87,000 out of the US$235,829 claimed for real property and US$71,000 out of the US$450,437 claimed for other tangible property.

3. Payment or relief to others - US$2,653,424

(a) Relief paid to employees - US$2,534,228

234. The Fund seeks compensation in the amount of US$2,534,228 for relief paid to employees.

235. The response of the Government of Kuwait to the Panel's questions regarding the Social Security Fund states that the amount claimed is based upon the employees' salaries before deduction of the social security contribution. The Panel accepts this statement.

236. The Panel accepts, as set out at paragraph 36 above, the compensability of such relief paid to employees subject to the percentage adjustment set out at paragraph 48 above, and the deduction of the employees' social security contribution.

237. The Panel is satisfied that there is no duplication of claim as between employees who had been working in London and those employees who remained in Kuwait. However, the Panel finds that an adjustment should be made for insufficient evidence.

238. In light of the above, the Panel recommends compensation in the amount of US$842,000 out of the US$2,534,228 claimed.

(b) Relocation expenses - US$77,095 and temporary housing - US$42,101

239. The Fund seeks compensation for travel expenses for key Fund employees who were evacuated to London to staff the Fund's temporary office and who were, after liberation, repatriated to Kuwait.

240. Prior to Iraq's invasion and occupation of Kuwait, the Fund provided accommodation in Kuwait to some of its employees in villas rented by the Fund. These villas remained uninhabitable for several months after June 1991, when the employees began returning to Kuwait, and the provision of alternative accommodation was necessary. The Fund seeks compensation for the cost of providing alternative housing, usually in hotels, for such employees for various periods.

241. The Panel finds, as set out above at paragraphs 76 and 81, that these two loss elements are compensable.

242. As to the claim for the cost of alternative housing, the Panel finds, further to the considerations examined above at paragraph 77, that a reasonable period for the award of compensation is two months after the emergency period, having regard to the limited nature of the repairs required to be done to the villas. On the basis of the documents provided, including invoices from hotels, the Panel has made adjustments to account for the fact that some of the costs were incurred after July 1991, that is, after the end of the relevant period for compensation.

243. The amounts claimed fall below the level of materiality adopted by the Panel and, therefore, as noted above, the Panel has neither requested nor reviewed any evidence other than that submitted by the Fund. The Panel finds adjustments should be made for overstatement and insufficient evidence.

244. In light of the above, the Panel recommends compensation in the amount of US$61,000 out of US$77,095 claimed for relocation expenses and US$17,000 out of the US$42,101 claimed for temporary housing.

4. Other losses - US$739,926

(a) Pre-paid rent - US$739,926

245. The Fund seeks compensation for pre-paid rent on a number of the villas which were rented for employees prior to the Iraq's invasion and occupation of Kuwait. The rent was paid in early July 1990 for the year beginning July 1990. The Fund seeks compensation for the amount of pre-paid rent referable to the period 2 August 1990 to 30 June 1991.

246. As set out at paragraph 84 above, compensation should be awarded for that portion of the pre-paid rent referable to the period that the Fund was unable to use the premises as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that this period is 2 August 1990 to 30 June 1991 because the employees left Kuwait following the invasion and the villas were still uninhabitable in July 1991.

247. In light of the above, the Panel recommends payment in full in the amount of US$739,926.

H. State Audit Bureau

Government Claim No. 26, UNCC Claim No. 5000143

Table 8. Summary Table for State Audit Bureau

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Other tangible property	174,130	120,000	248-250
Relief paid to employees	1,807,397	551,000	251-255
Other Losses			
a) Pre-paid rent	571,857	571,857	256-258
b) Increased rent	1,912,142	812,000	259-262
c) Additional consultants' salaries	63,622	0	263-265
Sub-total	2,547,621	1,383,857	
Total	4,529,148	2,054,857	
Interest	719,200		

1. Other tangible property - US$174,130

Vehicles US$22,563
Furniture and fixtures US$102,614
Office equipment US$48,953

248. The State Audit Bureau ("SAB") was established to ensure financial control within the Government of Kuwait. It does so by reviewing and auditing the finances of the various Government entities. SAB claims the market value of three motor vehicles it lost together with the cost of replacing furniture, fixtures and office equipment.

249. The amounts claimed fall below the level of materiality adopted by the Panel. The Panel has therefore neither requested nor reviewed any evidence other than that submitted by SAB. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses, and insufficient evidence.

250. In light of the above, the Panel recommends compensation in the amount of US$120,000 out of the US$174,130 claimed.

2. Payment or relief to others - US$1,807,397

(a) Relief paid to employees - US$1,807,397

251. SAB seeks compensation in the amount of US$1,807,397 for relief paid to employees.

252. The response of the Government of Kuwait to the Panel's questions regarding the Social Security Fund states that the amount claimed is based upon the employees' salaries before deduction of the social security contribution. The Panel accepts this statement.

253. The Panel, as set out at paragraph 36 above, accepts the compensability of such relief paid to employees subject to the percentage adjustment set out at paragraph 48 above, and the deduction of the employees' social security contribution (in the amount specified by SAB in its statement of claim).

254. The Panel finds that an adjustment should also be made for insufficient evidence.

255. In light of the above, the Panel recommends compensation in the amount of US$551,000 out of the US$1,807,397 claimed.

3. Other losses - US$2,547,621

(a) Pre-paid rent - US$571,857

256. SAB seeks compensation for pre-paid rent on its building. The rent was paid in July 1990 for use of the premises in the year beginning 1 July 1990 and SAB seeks compensation for the amount of pre-paid rent referable to the period 2 August 1990 to 30 June 1991.

257. As set out at paragraph 84 above, compensation should be awarded for that portion of the pre-paid rent referable to the period that SAB was unable to use the premises as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that this period is 2 August 1990 to 30 June 1991.

258. In light of the above, the Panel recommends payment in full in the amount of US$571,857.

(b) Increased rent - US$1,912,142

259. SAB asserts that construction of its new office building was delayed as a result of Iraq's invasion and occupation of Kuwait and it therefore incurred rental expenses that it would not otherwise have for the period 1 February 1992 (which is shortly after the date upon which the office building was originally due to be completed) to 31 December 1994 (the date estimated in the statement of claim as the date when SAB would cease paying rent). 43/

260. The Panel finds, as set out above at paragraph 75, that the cost of such temporary premises is compensable to the extent and for a reasonable period as described above at paragraph 75, subject to a deduction for the net cost saving in renting (as opposed to owning) a building. In accordance with the considerations at paragraph 77 above, the Panel reviewed the original and subsequent building contracts, the appropriateness of the rent paid, the causes for the delay in reconstruction and the rental agreement.

261. The Panel finds that a reasonable period for the award of compensation in the context of this claim is 18 months and that an adjustment should be made for saved expenses.

262. In light of the above, the Panel recommends compensation in the amount of US$812,000 out of the US$1,912,142 claimed.

(c) Additional consultants' salaries - US$63,622

263. Prior to the invasion, two of SAB's consultant engineers spent half of their time supervising the construction of the new office building. SAB asserts that the office building was scheduled to be built over the period 30 April 1990 to 24 January 1992. Thus, immediately before the invasion, each engineer was scheduled to spend 17.8 more months supervising the project (being the number of months between 1 August 1990 and 24 January 1992). At the time of submitting the statement of claim, SAB estimated that, due to the interruption of the project, the consultant engineers would now complete their work on the project on 19 October 1994. SAB claims that one of the engineers was re-assigned to the project on 1 February 1992 and the other on 16 May 1992. It therefore claims the cost of the engineers for the estimated additional months they would be required to supervise the project.

264. For the same reasons as set out in paragraphs 259 to 261 above, the Panel finds that it was reasonable for the engineers to work on the project until 24 July 1993 (being 18 months after the original completion date of 24 January 1992). The Panel finds that the cost of the consultants for the

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period from their respective reassignments to the project until 24 July 1993 is, in principle, compensable. However, the cost of the engineers for this period is more than offset by the savings to SAB in not paying for them for the period from 1 August 1990 until their respective reassignments. 44/

265. Accordingly, the Panel does not recommend any compensation for the additional consultants' salaries.

I. Council of Ministers

Government Claim No. 28, UNCC Claim No. 5000145

Table 9. Summary Table for Council of Ministers

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Real property	3,034,379	2,449,000	266-271
Other tangible property	12,520,718	6,793,000	266-271
Loss of revenue	2,284,361	0	272-274
Relief paid to employees	8,851,408	3,540,000	275-278
Total	26,690,866	12,782,000	
Interest	4,241,077		

1. Property losses

(a) Real property - US$3,034,379

(b) Other tangible property - US$12,520,718

Furniture and supplies US$7,007,256

Contents of Heritage Centre US$4,553,795

Contents of Central Library US$959,667

266. The Council of Ministers (the "Council") serves as the Government of Kuwait's governing branch in conjunction with the National Assembly and the Amir. The Council is composed of all Government Ministers and is headed by the Crown Prince and Prime Minister. The Council claims that its governmental buildings appear to have been targeted by Iraq for destruction and damage. The Council seeks compensation for damage to its headquarters known as the Sulaibikhat building, the Central Tenders Committee building, the National Council of Culture, Arts and Letters (composed of the Heritage Center and the Central Library), the Stores Department, and other buildings. The Council also claims for the loss of tangible property including furniture, office equipment, supplies, artwork, books, periodicals, and manuscripts on microfilm.

267. The Council states that damage to the Sulaibikhat building may have occurred during the fighting between Iraq and the Allied Coalition Forces. Paragraph 34(a) of decision 7 provides that compensation is available for any loss suffered as a result of "[m]ilitary operations ... by either side during the period 2 August 1990 to 2 March 1991". The Panel finds, following the decision of the panel in the WBC Claim, 45/ that such damage

is compensable. Iraq is liable for any direct loss, whether caused by its own or the Allied Coalition Forces between 2 August 1990 and 2 March 1991.

268. Under other tangible property loss, the Council seeks, among other things, the cost of hiring four researchers for a period of three years to review reels of microfilm. The work had not been started at the time the Council filed supplemental submissions in May 1998. The Panel finds that the anticipated cost of hiring researchers in this way to review microfilm for damage is not a direct loss.

269. The Panel has considered the basis upon which the Council valued its tangible property losses and the process by which repairs to real property were effected. The Panel has requested and received a number of documents in addition to the evidence submitted with the claim.

270. The Panel finds that adjustments should be made for an inadequate procurement process, inadequate accounting for depreciation, enhancement, saved expenses, and insufficient evidence.

271. In light of the above, the Panel recommends compensation in the amount of US$2,449,000 out of the US$3,034,379 claimed for real property loss and US$6,793,000 out of the US$12,520,718 claimed for other tangible property loss.

2. Business transaction or course of dealing - US$2,284,361

(a) Loss of revenue - US$2,284,361

272. Prior to the invasion, the Central Tenders Committee ("CTC"), a division of the Council, earned revenue from the collection of fees in relation to tenders for Government of Kuwait contracts. The Council claims that CTC was unable to operate during the occupation and emergency periods and seeks compensation for loss of revenue for the 1991 and 1992 fiscal years.

273. The Panel finds, as set out at paragraphs 51 to 58 above, that the loss of revenue is compensable for the period described in paragraph 52 above, subject to deductions for exceptional post-liberation revenue, for fees that would have been paid by other Government of Kuwait departments and for saved expenses. The Panel sought information as to the revenue earned by the Council in fiscal years 1986-1995. From analysis of the Council's financial statements, it appears there was a very substantial increase in CTC revenue over the three years ended 30 June 1995. The Panel finds, after taking into account this exceptional post-liberation revenue, that the overall loss of revenue was small. Taking into consideration the

fact that no account was taken of savings in outgoings, including identifiable direct costs of collecting CTC fees, the Panel finds there is no net revenue loss.

274. In light of the above, the Panel does not recommend any compensation for the claim for lost CTC revenue.

3. Payment or relief to others - US$8,851,408

(a) Relief paid to employees - US$8,851,408

275. The Council seeks compensation in the amount of US$8,851,408 for relief paid to employees.

276. The response of the Government of Kuwait to the Panel's questions regarding the Social Security Fund states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

277. The Panel, as set out at paragraph 36 above, accepts the compensability of such relief paid to employees subject to the percentage adjustment set out at paragraph 48 above.

278. In light of the above, the Panel recommends compensation in the amount of US$3,540,000 out of the US$8,851,408 claimed.

J. Department of Legal Advice and Legislation

Government Claim No. 29, UNCC Claim No. 5000146

Table 10. Summary Table for Department of Legal Advice and Legislation

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Other tangible property	225,903	136,000	279-281
Relief paid to employees	1,950,063	780,000	282-285
Pre-paid rent	237,117	237,117	286-288
Total	2,413,083	1,153,117	
Interest	383,960		

1. Other tangible property - US$225,903

Furniture, fixtures, office equipment and supplies US$180,303
Motor vehicles US$16,584
Office appliances US$1,705
Law library book collection US$27,311

279. The Department of Legal Advice and Legislation ("DLAL") acts as the Government of Kuwait's legal counsel. DLAL seeks compensation for tangible property losses, being the items set out above.

280. The amounts claimed fall below the level of materiality adopted by the Panel and, therefore, as noted above, the Panel has neither requested nor reviewed any evidence other than that submitted by DLAL. The Panel finds that adjustments should be made for inadequate accounting for depreciation, overstatement, saved expenses, and insufficient evidence.

281. In light of the above, the Panel recommends compensation in the amount of US$136,000 out of the US$225,903 claimed.

2. Payment or relief to others - US$1,950,063

(a) Relief paid to employees - US$1,950,063

282. DLAL seeks compensation in the amount of US$1,950,063 for relief paid to employees.

283. The response of the Government of Kuwait to the Panel's questions regarding the Social Security Fund states that the amount claimed is based

upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

284. The Panel, as set out at paragraph 36 above, accepts the compensability of such relief paid to employees subject to the percentage adjustment set out at paragraph 48 above.

285. In light of the above, the Panel recommends compensation in the amount of US$780,000 out of the US$1,950,063 claimed.

3. Other losses - US$237,117

(a) Pre-paid rent - US$237,117

286. DLAL seeks compensation for pre-paid rent on its headquarters on the basis of a pre-invasion payment instruction. Although DLAL signed a payment request to the Ministry of Finance on 20 July 1990 for use of the premises in the six months beginning 1 July 1990, the rent was not paid until October 1991. The Panel is satisfied that, so far as DLAL is concerned, the payment instruction was effective as of 20 July 1990 and therefore that the rent should be treated as being paid prior to Iraq's invasion and occupation of Kuwait (that is, as pre-paid rent) for present purposes. DLAL seeks compensation for the amount of pre-paid rent referable to the period 2 August 1990 to 31 December 1990.

287. As set out at paragraph 84 above, compensation should be awarded for that portion of the pre-paid rent referable to the period that DLAL was unable to use the premises as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that this period is 2 August 1990 to 31 December 1990.

288. In light of the above, the Panel recommends payment in full in the amount of US$237,117.

K. Civil Service Commission

Government claim No. 33, UNCC Claim No. 5000161

Table 11. Summary Table for Civil Service Commission

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Payment or relief to others			
a) Relief paid to employees	3,742,181	1,422,000	289-292
b) Repatriation expenses	5,270	5,270	293-295
Sub-total	3,747,451	1,427,270	
Other tangible property	537,055	337,000	296-299
Total	4,284,506	1,764,270	
Interest	680,920		

1. Payment or relief to others - US$3,747,451

(a) Relief paid to employees - US$3,742,181

289. The Civil Service Commission ("CSC") is responsible for the supervision of personnel and employee related matters for all the Ministries and organizations of the Government of Kuwait. CSC did not operate during the occupation and emergency period and its offices are said to have been used as a military field hospital. CSC seeks compensation in the amount of US$3,742,181 for relief paid to employees.

290. The response of the Government of Kuwait to the Panel's questions regarding the Social Security Fund states that the amount claimed is based upon the employees' salaries before deduction of the social security contribution. The Panel accepts this statement.

291. The Panel, as set out at paragraph 36 above, accepts the compensability of such relief paid to employees subject to the percentage adjustment set out at paragraph 48 above, and the deduction of the employees' social security contribution.

292. In light of the above, the Panel recommends compensation in the amount of US$1,422,000 out of the US$3,742,181 claimed.

(b) Repatriation expenses - US$5,270

293. CSC claims the costs of transporting 16 employees from Egypt to Kuwait after liberation. These 16 employees had previously been employed by CSC in Kuwait and went to Egypt after the invasion. The Panel finds, as set out above at paragraph 81, that such costs are compensable.

294. This item of claim fell below the materiality level adopted by the Panel and, therefore, as noted above, the Panel has neither requested nor reviewed any evidence other than that submitted by CSC. The Panel finds that adjustments should be made for insufficient evidence but, due to the impact of rounding (considered above at paragraph 127), no adjustment is necessary.

295. In light of the above, the Panel recommends compensation in the full amount of the US$5,270 claimed.

2. Other tangible property - US$537,055

Temporary furniture	US$480,562
Vehicles	US$56,493

296. CSC claims for the loss of, or damage to, most of its furniture, office equipment and vehicles. After the invasion, CSC repaired a few remaining pieces of the furniture and purchased low quality furniture as an interim stopgap measure to replace taken furniture, so as to resume regular operations as soon as possible. When it moved to new premises in early 1994, CSC purchased new furniture and left behind 90 per cent of the low quality furniture, for which it asserts it could not have received any salvage value.

297. The Panel finds that the cost of temporary furniture claimed by CSC is compensable for reasons similar to those considered above at paragraph 73 in relation to temporary repairs. Here, it was reasonable for CSC to purchase the low quality furniture immediately after liberation for interim use.

298. However, adjustments should be made for inadequate accounting for depreciation and residual value, saved expenses, and insufficient evidence.

299. In light of the above, the Panel recommends compensation in the amount of US$337,000 out of the US$537,055 claimed.

L. Ministry of Higher Education

Government Claim No. 39, UNCC Claim No. 5000167

Table 12. Summary Table for Ministry of Higher Education

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Real property	503,600	296,000	300-303
Other tangible property	660,275	440,000	304-305
Relief paid to employees	1,019,465	408,000	306-309
Pre-paid rent	332,518	332,518	310-312
Total	2,515,858	1,476,518	
Interest	400,200		

1. Property losses

(a) Real property - US$503,600

300. The Ministry of Higher Education ("MHE") is responsible for the formation and implementation of higher education policy in Kuwait. The real property losses of MHE include the cost of repairing and cleaning its damaged headquarters, Music Institute and theatre.

301. MHE leased its headquarters. The Panel finds, as set out above at paragraph 68, that where leased premises were damaged as a result of Iraq's invasion and occupation of Kuwait the tenant can claim the cost of repairs undertaken by it, provided that the landlord has not been awarded compensation by the Commission for the same loss.

302. The Panel finds that adjustments should be made for inadequate accounting for depreciation, overstatement and insufficient evidence.

303. In light of the above, the Panel recommends compensation in the amount of US$296,000 out of the US$503,600 claimed.

(b) Other tangible property - US$660,275

304. MHE seeks compensation for the loss of furniture and equipment from its headquarters. The Panel finds that adjustments should be made for inadequate accounting for depreciation and insufficient evidence.

305. In light of the above, the Panel recommends compensation in the amount of US$440,000 out of the US$660,275 claimed.

2. Payment or relief to others - US$1,019,465

(a) Relief paid to employees - US$1,019,465

306. MHE seeks compensation in the amount of US$1,019,465 for relief paid to employees.

307. The response of the Government to the Panel's questions regarding the Social Security Fund states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

308. The Panel, as set out at paragraph 36 above, accepts the compensability of such relief paid to employees subject to the percentage adjustment set out at paragraph 48 above.

309. In light of the above, the Panel recommends compensation in the amount of US$408,000 out of the US$1,019,465 claimed.

3. Other losses - US$332,518

(a) Pre-paid rent - US$332,518

310. MHE seeks compensation for pre-paid rent on its headquarters. The rent was paid in July 1990 for use of the premises in the six months beginning 1 July 1990 and MHE seeks compensation for the amount of pre-paid rent referable to the period 2 August 1990 to 31 December 1990.

311. As considered at paragraph 84 above, compensation should be awarded for that portion of the pre-paid rent referable to the period that MHE was unable to use the premises as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that this period is 2 August 1990 to 31 December 1990.

312. In light of the above, the Panel recommends payment in full in the amount of US$332,518.

M. Ministry of Commerce and Industry

Government Claim No. 40, UNCC Claim No. 5000168

Table 13. Summary Table for Ministry of Commerce and Industry

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Real property	50,480	14,000	313-315
Other tangible property	2,505,803	1,344,000	316-318
Relief paid to employees	14,763,320	5,905,000	319-322
Loss of revenue	3,617,471	2,824,000	323-325
Total	20,937,074	10,087,000	
Interest	3,326,880		

1. Property losses

(a) Real property - US$50,480

313. The Ministry of Commerce and Industry ("MCI") is responsible for the regulation of Kuwait's businesses, stores and markets. Its area of responsibility extends to quality control testing on commodities and products sold in Kuwait.

314. The real property losses of MCI include the cost of repairing damage to its Quality Control Testing Centre and branch offices. The amounts claimed fall below the level of materiality adopted by the Panel and, therefore, as noted above, the Panel has neither requested nor reviewed any evidence other than that submitted by MCI. The Panel finds that adjustments should be made for an inadequate procurement process, inadequate accounting for depreciation, saved expenses, and insufficient evidence.

315. In light of the above, the Panel recommends compensation in the amount of US$14,000 out of the US$50,480 claimed.

(b) Other tangible property - US$2,505,803

Quality control testing equipment	US$1,932,911
Office furniture, equipment and supplies	US$522,085
Motor vehicles	US$50,807

316. MCI seeks compensation for the above tangible property losses.

317. The Panel finds that adjustments should be made for an inadequate procurement process, enhancement, inadequate accounting for depreciation, saved expenses (particularly in relation to the regular checking and maintenance which would otherwise have been required on the quality control testing equipment), and insufficient evidence. For those items of tangible property where the claimed amount fell below the level of materiality adopted by the Panel, as noted above, the Panel has neither requested nor reviewed any evidence other than that submitted by MCI.

318. In light of the above, the Panel recommends compensation in the amount of US$1,344,000 out of the US$2,505,803 claimed.

2. Payment or relief to others - US$14,763,320

(a) Relief paid to employees - US$14,763,320

319. MCI seeks compensation in the amount of US$14,763,320 for relief paid to employees.

320. The response of the Government of Kuwait to the Panel's questions regarding the Social Security Fund states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

321. The Panel, as set out at paragraph 36 above, accepts the compensability of such relief paid to employees subject to the percentage adjustment set out at paragraph 48 above.

322. In light of the above, the Panel recommends compensation in the amount of US$5,905,000 out of the US$14,763,320 claimed.

3. Business transaction or course of dealing - US$3,617,471

(a) Loss of revenue - US$3,617,471

323. Before the invasion, MCI earned revenue from commercial registration and licence fees, sales taxes on metals, rocks and sand, taxes on outdoor advertising, and penalties imposed on businesses for failing to file commercial registrations or obtain business licences or for selling defective products. MCI's operations were suspended during the occupation and emergency periods. It claims the resultant loss of revenue for the period 1 July 1990 to 30 June 1991.

324. The Panel finds, as set out at paragraphs 51 to 58 above, that the loss of revenue is compensable for the period described in paragraph 52 above, subject to deductions for exceptional post-liberation revenue, for revenue that would have been paid by other Government departments and for saved expenses. The Panel sought, by Procedural Order 4, which it issued on 6 November 1998, information as to the revenue earned by the Council in fiscal years 1986-1995. The Panel finds that MCI did not incur certain expenses that it would ordinarily have incurred to generate the revenue claimed and in this regard recommends a deduction from the amount claimed.

325. In light of the above, the Panel recommends compensation in the amount of US$2,824,000 out of the US$3,617,471 claimed.

N. National Committee for Missing and Prisoner of War's Affairs

Government Claim No. 41, UNCC Claim No. 5000169

Table 14. Summary Table for National Committee for Missing and Prisoner of War's Affairs

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Payment or relief to others			
a) Family support payments (1)	58,452,768	153,462,000	326-337
b) Salary payments (2)	27,026,147	0	338-340
Sub-total	85,478,915	153,462,000	
Public service expenditures (3)	26,004,514	23,647,000	341-343
Total	111,483,429	177,109,000	
Interest	43,360,700		

(1) plus daily loss of US$22,411 from 1 May 1998
(2) plus daily loss of US$10,515 from 1 May 1998
(3) plus daily loss of US$10,317 from 1 May 1998

1. Payment or relief to others - US$85,478,915 plus daily loss of US$32,926 from 1 May 1998

(a) Family support payments - US$58,452,768 plus daily loss of US$22,411 from 1 May 1998

326. The National Committee for Missing and Prisoner of War's Affairs (the "COM Committee") was created in May 1991 to care for the affairs of the individuals still missing after the liberation of Kuwait. One of its first tasks was to investigate the circumstances surrounding the disappearance of over 2,000 people reported as missing by their families. The COM Committee asserts that it ultimately submitted to the International Committee of the Red Cross ("ICRC") a list of 625 individuals whom the COM Committee believes were taken prisoner by Iraq. Iraq denies that it is holding any prisoners.

327. In its statement of claim, the COM Committee seeks compensation for the following:

(a) the cost of support payments made and to be made to the families of the 625 individuals set out in paragraph 326 above;

(b) the cost of the salaries of those of the 625 individuals who were Government employees (the salaries continue to be paid into trust accounts); and

(c) its administrative expenses. 46/

328. In a supplemental submission of claim, the COM Committee states that twenty individuals were "accounted for intermittently" between 1 May 1994 (when the statement of claim was submitted) and 30 April 1998 (when the supplemental submission of claim was submitted). The supplemental submission of claim assumes that five of these twenty individuals were accounted for each year and removes these individuals from the claim for support and salary payments accordingly. Thus, for the period from 1 May 1998, the COM Committee seeks compensation for the support and salary payments in relation to 605, not 625, individuals. The Panel uses the term "Individuals" to refer to this fluctuating list.

329. The Panel first turns to consider the question of the number of individuals who are to be accepted by the Panel as missing. In its response to Procedural Order 1 issued in respect of this claim, Iraq states that 18 of the names on the list of 625 were, in fact, "repeated names". 47/

330. The Panel subsequently issued Procedural Order 30 in order to clarify, amongst other things, the reasons for the reduction in the number of Individuals from 625 to 605 between submission of the statement of claim and submission of the supplemental submission of claim. From the response to Procedural Order 30 and the Panel's consideration of other materials, the Panel finds that only 596 individuals are to be treated as missing as at the date of submission of the claim and 595 as of 1 February 1996. 48/ The Panel will refer to these persons as the "Missing".

331. As to the claim for the cost of support payments (made, according to the COM Committee, to compensate the families for loss of financial support from the Individuals), the Panel finds that the claim is compensable. The families of the Missing have suffered (and will continue to suffer) losses compensable under paragraph 14 of decision 1 and paragraphs 6(e) and 7 of decision 7 and the support payments are made to compensate for these losses, which renders the COM Committee's claim compensable under paragraph 36 of decision 7. 49/

332. The Panel now turns to consider the quantum of compensation to be recommended for the support payments claimed for the period 1 June 1991 to 30 April 1998 and an estimated amount for each day thereafter until the Individuals are released or otherwise accounted for. The claim is compensable in the amount of financial support that the family members

could no longer receive from the Missing as a direct result of the invasion and occupation of Kuwait.

333. In calculating the amount of such financial support, the Panel has calculated the income of the Missing, the number of persons supported and the time period over which such support would have been provided. The "C" and "D" Panels have considered the amount of compensation that should be awarded to an individual who has suffered a loss of financial support because of the death of his or her spouse, child or parent, 50/ and the Panel has adopted the approach of those panels by basing the amount of compensation on the present value of the stream of future income of the Missing. The Panel also follows the approach of the "D" panel in taking into account the fact that a portion of the income of the Missing would have been used for his or her maintenance. 51/

334. In order to calculate the amount of such financial support, the Panel has first considered the period from 1 June 1991 to 31 July 1999. 52/ On the basis of the information provided within the claim, the Panel has concluded that the average annual amount of financial support that each of the families of the Missing could no longer receive during this period is approximately US$14,000. The Panel therefore recommends compensation in the amount of US$66,999,000 for the period 1 June 1991 to 31 July 1999.

335. The Panel has then calculated the compensation to be awarded for the future: that is, the present value of the future support, bearing in mind the average level of annual support and the family relationships as set out above. This second period commences on 1 August 1999 and continues until such time as the Missing would no longer have provided support to their families or until they are released or are otherwise accounted for. In performing this calculation, the Panel has considered, amongst other things, the average age of the Missing and the demographics of the family members who would have received support. The Panel has also taken into account the fact that a number of the Missing may return to Kuwait and be able again to support their families. On the basis of the above considerations, the Panel has calculated the present value as US$86,463,000. 53/

336. On the basis of the evidence before it, the Panel is satisfied that the Government of Kuwait has in fact made support payments to the families of the Individuals equal to the amounts now claimed. The Panel is satisfied that the support payments will continue to be made until the Missing are released or are otherwise accounted for.

337. Accordingly the Panel recommends compensation in the amount of US$153,462,000. This recommendation comprises the award of compensation

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for the payments already made and for the present value of the future payments to be made.

(b) Salary payments - US$27,026,147 plus daily loss of US$10,515 from 1 May 1998

338. The COM Committee is responsible for the payment into their bank accounts of the salaries of the Individuals who were Government of Kuwait employees. The COM Committee seeks compensation for the cost of such payments for the period from 1 June 1991 to 30 April 1998 and an estimated amount for each day thereafter until the Individuals are released or are otherwise accounted for.

339. This claim for salaries is compensable only to the extent that the payments come within paragraph 36 of decision 7 by being "payments ... for losses covered by any of the criteria adopted by the Council". Under paragraph 1(b) of decision 12, "claims of individuals ... who have been detained in Iraq" may be submitted within one year of the detainee's release or death (as legally determined by the detainee's Government), but not later than the time limit set out in paragraph 2 of the decision. The claims of the Missing cannot yet be filed under paragraph 1(b) of decision 12 because the Missing have not yet been released and their death has not been legally determined by the Government of Kuwait. Therefore, the Missing have not suffered a loss within the "criteria adopted by the Council".

340. The Panel therefore recommends that the Commission's review of this loss element be performed when the Missing are released or the Government of Kuwait determines that they are deceased. The Panel notes that the Missing can file claims for their losses under paragraph 2 of decision 12 even after the Panel has completed its review of the "F3" claims.

2. Public service expenditures - US$26,004,514 plus daily loss of US$10,317 from 1 May 1998

(a) Cost of investigations, social services and administration - US$26,004,514 plus daily loss of US$10,317 from 1 May 1998

341. The COM Committee seeks compensation for the costs of operating its office from 1 July 1992 to 30 April 1998 plus an estimated amount for each further day until all the Individuals are released or are otherwise accounted for. The COM Committee's costs incurred before 1 July 1992 are included in the claim of the Ministry of Justice, which paid the expenses at that time, and which claim is considered below.

342. The Panel finds that the reasonable cost of administering the support payments to the families of the Missing is compensable. The Panel finds that the value of such costs incurred from 1 July 1992 until the end of the COM Committee's work is 16 per cent of the amount to be awarded for the family support payments.

343. Accordingly, the Panel recommends compensation in the amount of US$23,647,000. This recommendation comprises the award of compensation for the costs already incurred and the present value of the costs to be incurred in the future.

3. Interest - US$43,360,700

344. The Panel finds it inappropriate to adopt 26 February 1991 as the date of loss for the calculation of interest, since that date of loss precedes any part of the loss claimed. The Panel has therefore considered alternative dates and selected 31 October 1997 as the most appropriate. This was selected by considering the amounts and dates of the compensable payments and after allowing for the fact that the present value of future payments has been calculated as of 1 August 1999.

O. Kuwait News Agency

Government Claim No. 44, UNCC Claim No. 5000172

Table 15. Summary Table for Kuwait News Agency

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Business transaction or course of dealing			
a) Loss of revenue	1,213,539	0	345-348
b) Hiring and training costs	1,720,072	329,000	349-363
c) Temporary premises	2,008,276	349,000	364-367
Sub-total	4,941,887	678,000	
Other tangible property			
a) Furniture, office equipment and vehicles	720,816	318,000	368-370
b) Archives	13,445,585	3,643,000	371-375
c) Library and reference materials	28,678	15,000	376-378
Sub-total	14,195,079	3,976,000	
Relief paid to employees	3,022,491	1,209,000	379-382
Public service expenditures			
a) Free news service	128,942	106,000	383-386
b) Foreign office expenses	1,734,342	451,000	387-389
Sub-total	1,863,284	557,000	
Other losses			
a) Pre-paid rent on headquarters and employee housing	495,457	495,457	390-392
b) Pre-paid life insurance and consulting fees	23,495	0	393-395
Sub-total	518,952	495,457	
Total	24,541,693	6,915,457	
Interest	3,899,920		

1. Business transaction or course of dealing - US$4,941,887

(a) Loss of revenue - US$1,213,539

345. Before Iraq's invasion and occupation of Kuwait, the Kuwait News Agency ("KUNA") operated as a news agency, selling stories and photographs to private companies and to the Kuwaiti Ministry of Information. KUNA asserts that Iraq's invasion and occupation of Kuwait disrupted its operations together with those of its customers, causing a loss of revenue from 1 August 1990 to 30 June 1993.

346. The Panel accepts these assertions and is satisfied that the disruption to the operations of KUNA and its customers, which prevented the sale of news and photographs by KUNA, was a direct result of Iraq's invasion and occupation of Kuwait. Applying the principles set out at paragraphs 51 to 58 above, the Panel finds that the loss of revenue is compensable for the period claimed, subject to deductions for exceptional post-liberation revenue, for revenue that would have been derived from other Government of Kuwait departments and for saved expenses.

347. The Panel sought information as to the revenue earned by KUNA in fiscal years 1986-1995. The Panel finds, from figures provided for the period 1 July 1993 to 30 June 1998, that 67 per cent of KUNA's revenue was provided by another of the Government of Kuwait's departments, the Ministry of Information. This Ministry has two claims of its own before the Commission. Neither of these claims gives credit for a corresponding reduction in expenses. Accordingly, as set out in paragraph 57 above, the Panel has deducted that portion of KUNA's revenue which would have been derived from the Ministry of Information. The Panel also finds that an adjustment should be made for saved expenses.

348. In light of the above, the Panel does not recommend any compensation for loss of revenue.

(b) Hiring and training costs - US$1,720,072

Hiring costs US$409,653

Training programmes US$511,402

Staff salaries during training US$331,171

Management consultant fees US$467,846

349. KUNA claims that it incurred a variety of expenses in hiring and training new employees to replace a large number of employees who left Kuwait as a result of Iraq's invasion and occupation of Kuwait and never returned.

350. KUNA originally submitted that it needed to hire 205 new employees to replace 143 pre-invasion employees who did not return after liberation. In its response to Procedural Order 16, the Government of Kuwait stated that, in fact, only 112 pre-invasion employees did not return after liberation and that 21 of the 205 "new" employees were ones who had been employed by KUNA prior to the invasion. KUNA therefore reduced its claim to cover only 184 new employees.

351. The Government has shown that the failure of the majority of the employees to return was due to Iraq's invasion and occupation of Kuwait and, therefore, the Panel finds that the reasonable costs of hiring and training new employees to replace those employees was a direct loss as a result of Iraq's invasion and occupation of Kuwait. As regards the remaining employees who did not return after liberation, 54/ the Panel does not recommend any compensation for the amounts claimed for hiring and training their replacements.

352. Of the 184 new employees, KUNA seeks compensation for hiring costs in respect of only 122. In its response to Procedural Order 16, KUNA stated that 62 of the 184 new employees were of a lower skill level and should therefore be excluded from the claim for hiring costs. KUNA estimates that, for each new employee, the cost of advertising the position, corresponding with potential recruits, interviewing and testing applicants and following-up on references was approximately 10 per cent of the new employee's first year's salary. KUNA therefore claims 10 per cent of those salaries for these 122 new employees.

353. The Panel finds that an adjustment should be made for insufficient evidence.

354. In light of the above, and of the finding in paragraph 351 above, the Panel recommends compensation in the amount of US$16,000 out of the revised amount of US$303,623 claimed. 55/

355. KUNA seeks further compensation for the cost of training programmes from liberation until April 1994 for those of its new employees who, it asserts, were of a lower skill level than the employees they replaced. KUNA states that these training programmes, which included courses at Reuters News Agency in London, were required to bring the new employees to the skill level of the non-returning pre-invasion employees.

356. The evidence shows that KUNA would have, in normal circumstances, incurred 38 per cent of the amount claimed for training programmes and that corresponding adjustments should be made for overstatement and for insufficient evidence.

357. In light of the above, and the finding in paragraph 351 above, the Panel recommends compensation in the amount of US$139,000 out of US$511,402 claimed.

358. KUNA also seeks compensation for the cost of salaries estimated to have been paid to its new employees while they were undergoing training. KUNA has estimated that each new employee spent approximately one month in

training. In its response to Procedural Order 16, the Government of Kuwait explained that this included the time taken to become familiar with the new job, such as learning about KUNA's organization, and attending formal training programmes. KUNA therefore claims a sum equal to the monthly average of the new employees' salaries multiplied by the number of new employees.

359. The Panel finds that the correct measure of this loss is the loss of productivity of those workers while they were undergoing training. This loss is subsumed in KUNA's loss of revenue claim. The Panel therefore cannot recommend any compensation for the cost of staff salaries incurred during training.

360. KUNA also seeks the cost of management consultants hired to undertake the work of non-returning higher level staff.

361. The Panel finds that such costs are compensable, but as to the amounts claimed, an adjustment is required for insufficient evidence.

362. In light of the above, and the finding in paragraph 351 above, the Panel recommends compensation in the amount of US$174,000 out of the US$467,846 claimed.

363. Thus the total compensation recommended for hiring and training costs is US$329,000 out of the revised amount of US$1,614,042 claimed. 56/

(c) Temporary premises - US$2,008,276

364. KUNA claims that construction of its new headquarters was delayed as a result of Iraq's invasion and occupation and that consequently it incurred rent and expenses it would not otherwise have done for the period 1 July 1991 (which is when the headquarters were originally due to be completed) to 30 June 1995 (which was the estimated date given in the statement of claim for relocation to the new headquarters). 57/

365. The Panel finds, as set out above at paragraph 75, that the cost of such temporary premises is compensable for a reasonable period, subject to a deduction for the net cost saving in renting (as opposed to owning) a building. In accordance with the discussion at paragraph 77 above, the Panel reviewed the original and subsequent building contracts, the appropriateness of the rent paid, the causes for the delay in reconstruction, and the rental agreement.

366. The Panel finds that a reasonable period, in the context of this claim, for the award of compensation is 12 months.

367. The Panel therefore recommends compensation in the amount of US$349,000 out of the US$2,008,276 claimed.

2. Other tangible property - US$14,195,079

(a) Furniture, office equipment and vehicles - US$720,816

Furniture and office equipment US$267,069
Computers and technical equipment US$344,921
Motor vehicles US$108,826

368. KUNA seeks compensation for the above tangible property losses.

369. The amounts claimed fall below the level of materiality adopted by the Panel. The Panel has therefore neither requested nor reviewed any evidence other than that submitted by KUNA. The Panel finds that adjustments should be made for overstatement, inadequate procurement process, enhancement, inadequate accounting for depreciation, saved expenses, and for insufficient evidence.

370. In light of the above, the Panel recommends compensation in the amount of US$318,000 out of the US$720,816 claimed for furniture, office equipment, and vehicles.

(b) Archives - US$13,445,585

371. KUNA seeks compensation for the loss of, and damage to, its photographic and article archives. Creation of the archives began in 1978 and they constituted an historical record of news events and personalities in the Middle East. KUNA claims the cost of the labour and materials incurred in creating the archives. This includes the salaries of 31 employees for the twelve years from 1978 until Iraq's invasion and occupation of Kuwait.

372. The claim was valued by KUNA on the basis of the depreciated historic cost of creating the archives, and not the replacement cost of its contents, because data for the latter is unavailable. The Panel accepts that this method is appropriate in the circumstances. It has established the historic cost of creating the archives and has then discounted this cost to reflect KUNA's pre-invasion use of the archives and the fact that

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some of the archive material would have become redundant with time. In relation to the historic cost of the labour used to create the archives, the Panel has on investigation found that KUNA overstated both the number of hours of labour spent and its cost and has made an adjustment for this overstatement.

373. In its response to Procedural Order 1, Iraq stated that the article archive was returned to the Government of Kuwait pursuant to the United Nations Return of Property ("UNROP") programme. Attached to its response were copies of various UNROP forms detailing the items returned and observations as to their condition by the Government of Kuwait and Iraq. The Panel subsequently issued Procedural Order 37 to clarify whether the Government had taken this information into account when preparing its claim. In its response, the Government asserted that 10 per cent of the photographs (and none of the negatives) in the photographic archive were returned. It also asserted that, overall, about 10 per cent of the articles in the article archive were returned. 58/ It confirmed that the claim included the cost of creating this returned material. The Panel finds that an adjustment should be made to reflect this. It has therefore applied a 10 per cent deduction to the calculation set out in paragraph 372 above.

374. The Panel finds that a further adjustment should be made for insufficient evidence.

375. The Panel accordingly recommends compensation in the amount of US$3,643,000 out of the US$13,445,585 claimed for the archives.

(c) Library and reference materials - US$28,678

376. KUNA seeks compensation for the loss of a library of books and reference materials. The loss is calculated on the basis of the replacement cost of the lost materials.

377. The Panel finds that adjustments should be made for inadequate procurement process, inadequate accounting for depreciation, enhancement, and for insufficient evidence.

378. Accordingly, the Panel recommends compensation in the amount of US$15,000 out of the US$28,678 claimed for library and reference materials.

3. Payment or relief to others - US$3,022,491

(a) Relief paid to employees - US$3,022,491

379. KUNA seeks compensation in the amount of US$3,022,491 for relief paid to employees.

380. The response of the Government of Kuwait to the Panel's questions regarding the Social Security Fund states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

381. The Panel, as set out at paragraph 36 above, accepts the compensability of such relief paid to employees subject to the percentage adjustment set out at paragraph 48 above.

382. In light of the above, the Panel recommends compensation in the amount of US$1,209,000 out of the US$3,022,491 claimed.

4. Public service expenditures - US$1,863,284

(a) Free news service - US$128,942

383. KUNA seeks compensation for the cost of satellite equipment and teleprinters that it maintains were necessary for the broadcast to Kuwait of emergency news, such as details of mine clearance and the condition of roads, in the months after liberation.

384. In its response to Procedural Order 16, the Government of Kuwait submitted information relating to the type of news that was distributed during this period. The Panel is satisfied that the news was primarily of an emergency nature and, therefore, that reasonable costs incurred in distributing it are direct losses as a result of Iraq's invasion and occupation of Kuwait.

385. The amount claimed falls below the level of materiality adopted by the Panel and, therefore, as noted above, the Panel has neither requested nor reviewed any evidence other than that submitted by KUNA. Some adjustments should be made for insufficient evidence.

386. In light of the above, the Panel recommends compensation in the amount of US$106,000 out of the US$128,942 claimed.

(b) Foreign office expenses - US$1,734,342

387. KUNA asserts that it incurred a variety of expenses because, as a result of Iraq's invasion and occupation of Kuwait, it was compelled to relocate its headquarters to its London office from shortly after the invasion until June 1991. KUNA claims all of its expenses in relation to its London office for this period. In its response to Procedural Order 16, the Government of Kuwait submitted information relating to the activities of the London office. The Panel is satisfied that the office distributed news which was primarily of an emergency nature.

388. The Panel therefore finds that the decision to operate the office in London was reasonable in the circumstances and, as considered above at paragraph 79, that the cost of temporarily conducting the operations outside Kuwait is compensable, subject to deductions for expenses that would ordinarily have been incurred by KUNA in its operations in Kuwait. Since KUNA also had an office in London before the invasion, the Panel finds that a deduction should be made for the expenses that would ordinarily have been incurred by KUNA in its operations in London. An adjustment should also be made for insufficient evidence.

389. The Panel accordingly recommends compensation in the amount of US$451,000 out of the US$1,734,342 claimed.

5. Other losses - US$518,952

(a) Pre-paid rent on headquarters and employee housing - US$495,457

390. KUNA seeks compensation for pre-paid rent on its headquarters and on housing for its employees. The pre-paid rent on the headquarters was paid for the year beginning 1 July 1990 and KUNA seeks compensation for the amount of pre-paid rent referable to the period 2 August 1990 to 30 June 1991. The pre-paid rent on the employee housing was paid for the period 1 July 1990 to 30 September 1990 and KUNA seeks compensation for the amount of pre-paid rent referable to the period 2 August 1990 to 30 September 1990.

391. As set out at paragraph 84 above, compensation should be awarded for that portion of the pre-paid rent referable to the periods that KUNA was unable to use the premises as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that for the headquarters the period is 2 August 1990 to 30 June 1991 and for the employee housing the period is 2 August 1990 to 30 September 1990.

392. In light of the above, the Panel recommends payment in full in the amount of US$495,457.

(b) Pre-paid life insurance and consulting fees - US$23,495

393. Before the invasion KUNA pre-paid life insurance as a benefit for some of its employees, covering the period from 28 April 1990 to 27 April 1991. It also pre-paid legal consulting fees for the period from 17 February 1990 to 16 August 1990. KUNA seeks compensation for the portion of these pre-paid amounts, which it asserts it could not obtain the benefit of because of Iraq's invasion and occupation of Kuwait.

394. The Panel finds that the principles as considered above at paragraph 391 apply equally to these pre-paid amounts. However, KUNA has not shown that, as a result of Iraq's invasion and occupation of Kuwait, it was unable to obtain the benefit of these pre-paid services.

395. In light of the above, the Panel does not recommend any compensation for these loss elements.

P. Ministry of Justice

Government Claim No. 48, UNCC Claim No. 5000177

Table 16. Summary Table for Ministry of Justice

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Real property	1,586,033	925,000	396-399
Other tangible property	4,629,852	2,979,000	396-399
Loss of revenue	54,212,786	40,071,000	400-405
Stolen cash	88,900	61,000	406-407
Cost of investigations and administration and loss of transportation	1,648,215	769,000	408-411
Relief paid to employees	19,146,176	7,658,000	412-415
Total	81,311,962	52,463,000	
Interest	12,922,400		

1. Property losses

(a) Real property (office premises) - US$1,586,033

(b) Other tangible property - US$4,629,852

Furniture, fixtures, general equipment, stationery
and miscellaneous items US$2,298,042
Computer and microfilm equipment US$2,016,226
Library books US$144,287
Vehicles US$171,297

396. The Ministry of Justice ("MOJ") is the governmental authority responsible for administering Kuwait's justice system, including court facilities, the office of public prosecution, and the offices engaged in the collection of certain fees, such as court filing fees and fines. MOJ's administrative office and facilities, including courthouses and an evidence storage facility, were looted, vandalized and damaged during Iraq's invasion and occupation of Kuwait. MOJ claims the cost of repairing the damage to its real property and the cost of replacing stolen or destroyed tangible property.

397. Some items of claim, such as library books and office supplies, fall below the level of materiality adopted by the Panel. The Panel has, therefore, neither requested nor reviewed any evidence other than that submitted by MOJ in respect of these items.

398. With respect to all the items, the Panel finds that adjustments should be made for an inadequate procurement process, inadequate accounting for depreciation, enhancement, saved expenses, and insufficient evidence.

399. In light of the above, the Panel recommends compensation in the amount of US$925,000 out of US$1,586,033 claimed for real property losses and US$2,979,000 out of US$4,629,852 claimed for other tangible property losses.

2. Business transaction or course of dealing - US$54,212,786

(a) Loss of revenue - US$54,212,786

400. Prior to the invasion, MOJ collected an annual revenue of approximately US$30,000,000 from payments of real estate registration fees, court filing fees, attorney certification fees and fines. MOJ claims for the loss of the revenue that, but for Iraq's invasion and occupation of Kuwait, it would have collected in the financial years 1991, 1992 and 1993. MOJ claims on the basis of projected revenues for those years, using a weighted average amount (that is, giving greater weight to more recent years) of the revenue earned for the five years prior to the invasion. Actual revenues obtained by MOJ for the 1991 to 1993 financial years are subtracted from the projected revenues for those years to arrive at the claim amount.

401. The Panel finds, applying the principles set out at paragraphs 51 to 58 above, that the loss of revenue (including revenue from fines) is compensable for the period described in paragraph 52 above, subject to deductions for exceptional post-liberation revenue, for revenue that would have been derived from other Government departments, and for saved expenses.

402. The Panel issued Procedural Orders in November and December 1998 seeking information about the revenue earned by MOJ in the fiscal years 1986-1995 and the method of raising and collecting certain fees and fines with a view to ascertaining whether there had been any extraordinary revenues and any savings in expenses which should be brought into account. MOJ's financial statements, monthly revenue information and responses to the requests in the Procedural Orders reveal that revenues increased significantly in the fiscal years 1994 and 1995. By analysing MOJ's revenue-earning patterns, the Panel finds that, if account is taken of MOJ's revenue for five years to 30 June 1995, MOJ suffered an overall shortfall of revenue in those financial years in the amount of US$42,180,000.

403. However, the Panel also finds, on the basis of the materials contained in the responses to the Procedural Orders, that reductions should be made to the amount of the shortfall in revenue by reason of saved expenses, including the salaries of persons involved in revenue collection and the cost of the means of transport and equipment used in relation to revenue collection.

404. No connection between the change in Kuwait's population composition and the loss of revenue was sufficiently clear for the Panel to act upon. The Panel has therefore not considered it appropriate to make any adjustment in this connection.

405. In light of the above, the Panel recommends compensation in the amount of US$40,071,000 out of the US$54,212,786 claimed.

3. Bank accounts and securities - US$88,900

(a) Stolen cash - US$88,900

406. MOJ claims compensation for cash and vouchers equivalent to cash stolen from its safes in the Justice Palace in Kuwait. The Panel finds that the claim is compensable subject to there being probative evidence, such as contemporaneous records or witness testimony, as to amounts ordinarily held there by MOJ.

407. MOJ withdrew by supplemental submission a portion of this item of claim in the amount of US$12,000 (relating to the vouchers). The Panel has therefore verified the claim for the remaining amount of US$76,900. As this item falls below the level of materiality adopted by the Panel, the Panel has neither requested nor reviewed any evidence other than that submitted by MOJ. The Panel finds that the claim is compensable but an adjustment should be made for insufficient evidence. Accordingly, the Panel recommends compensation in the amount of US$61,000 out of the revised amount of US$76,900 claimed.

4. Public service expenditures - US$1,648,215

(a) Cost of investigations and administration and loss of transportation - US$1,648,215

408. MOJ administered a committee (the "MOJ Committee") during the occupation period to monitor the plight of those individuals missing as a result of Iraq's invasion and occupation of Kuwait and to work for their release. MOJ seeks the cost of operating the MOJ Committee during the occupation period and thereafter until May 1992, when responsibility for

the work of the MOJ Committee passed to the Council of Ministers, which has made a separate claim as set out above at paragraphs 341 to 343.

409. The Panel finds that the cost of establishing and operating the MOJ Committee are compensable as a direct loss flowing from Iraq's invasion and occupation of Kuwait. Two items, the cost of transporting released individuals to Kuwait by air and the cost of furniture and fixtures needed to set up the MOJ Committee at the outset, are both allowed in full. 59/ As to the other items, the Panel has allowed a reasonable amount in respect of administrative costs calculated on a basis consistent with the approach taken in respect of the claim for the costs of the COM Committee. 60/

410. The Panel is satisfied, having considered the period and nature of the claims for the expenses of the MOJ Committee and the COM Committee, that there is no duplication in the amounts claimed. The Panel also finds that an adjustment should be made for insufficient evidence.

411. In light of the above, the Panel recommends compensation in the amount of US$769,000 out of the US$1,648,215 claimed.

5. Payment or relief to others - US$19,146,176

(a) Relief paid to employees - US$19,146,176

412. MOJ seeks compensation in the amount of US$19,146,176 for relief paid to employees.

413. The response of the Government of Kuwait to the Panel's questions concerning the Social Security Fund states that the amount claimed is based upon the employees' salaries after the deduction of the social security contribution. The Panel accepts this statement.

414. As set out at paragraph 36 above, the Panel accepts the compensability of such relief paid to employees subject to the percentage adjustment set out at paragraph 48 above.

415. In light of the above, the Panel recommends compensation in the amount of US$7,658,000 out of the US$19,146,176 claimed.

Q. Ministry of Awqaf and Islamic Affairs

Government Claim No. 49, UNCC Claim No. 5000178

Table 17. Summary Table for Ministry of Awqaf and Islamic Affairs

Loss type/Loss element	Amount claimed US$	Amount Recommended US$	Paragraph references
Real property	28,140,680	19,815,000	416-424
Other tangible property	3,672,654	2,999,000	425-428
Relief paid to employees	8,655,689	3,289,000	429-432
Loss of revenue	26,784,067	15,938,000	433-435
Contract interruption loss	822,031	275,000	436-438
Total	68,075,121	42,316,000	
Interest	10,818,160		

1. Property losses

(a) Real property - US$28,140,680

416. The Ministry of Awqaf and Islamic Affairs (the "Ministry of Awqaf") is responsible for the construction and maintenance of mosques and the administration of all Islamic affairs. The General Secretariat of Endowments ("Endowments Secretariat"), an independent entity operating within the Ministry of Awqaf, is responsible for the investment of funds donated for the advancement of religious, cultural, social and civil purposes.

417. The real property losses of the Ministry of Awqaf include the cost of repairing or reconstructing some 800 damaged or destroyed mosques and other buildings, including the Al-Fahad shopping centre complex in Kuwait, and the cost of hiring additional personnel to supervise repair contracts.

418. Iraq submitted, in its response to Procedural Order 1, that there was only one mosque in an area in respect of which the Government of Kuwait asserts there were two mosques which had been destroyed. In the mission to Kuwait undertaken in June 1999, the site was examined by the expert consultants and Commissioner Jacovides. From the evidence at the site and the findings of the mission, the Panel is satisfied that there were, in fact, two mosques which were destroyed as a result of Iraq's invasion and occupation of Kuwait.

419. As regards all the mosques, some of the repair and reconstruction work was done urgently immediately after liberation and was followed by

additional repair work later. The Panel finds, as considered above at paragraph 73, that the cost of the temporary works was reasonably necessary in the circumstances and is therefore compensable.

420. The Panel has investigated the amount of damage done to each mosque for which claim is made, and has allowed reconstruction costs (which are considerably higher than repair costs) only where it is satisfied that the mosques were incapable of repair. Adjustments have been made so as to deduct the excess of reconstruction over repair costs in appropriate cases.

421. Some of the mosques which were damaged or totally destroyed are not being rebuilt. The Ministry of Awqaf states that some of the mosques are located near the border between Kuwait and Iraq or at Failaka Island and will not be rebuilt. Nevertheless, the Panel considers that the loss of these mosques is compensable and that compensation is to be measured by the cost of rebuilding or repair at a reasonable time, as set out at paragraph 66 above. The Ministry of Awqaf has estimated the total cost of rebuilding on the assumption of the total destruction of all the mosques in the area and on the basis of cost per square metre. The total cost was then reduced to reflect depreciation. So far as concerns mosques which the Panel is satisfied were incapable of repair, this method of calculation has been accepted and applied by the Panel. In other cases, the reasonable cost of repair only has been allowed. In both cases, the depreciation rates applied by the Ministry of Awqaf have been considered and adjusted where necessary.

422. As to the cost of hiring additional supervisors, the Panel finds that Kuwait was required to obtain the best price reasonably available in the circumstances for particular remedial works. The reasonable cost of hiring additional supervising engineers, to the extent that their duties related to remedial maintenance work, is compensable. As the engineers were hired to supervise five maintenance contracts for necessary remedial work, their cost is compensable. The Panel has found it necessary to make some adjustments to the claim for remedial works to exclude items not related to damage resulting from Iraq's invasion and occupation of Kuwait. It has therefore made an appropriate corresponding reduction to the claim for the cost of hiring the additional engineers.

423. The Panel finds that adjustments should also be made in relation to all real property losses for overstatement (including claims for damage not shown to have been a result of Iraq's invasion and occupation of Kuwait), inadequate accounting for depreciation, saved expenses, and insufficient evidence.

424. In light of the above, the Panel recommends compensation in the amount of US$19,815,000 out of the US$28,140,680 claimed.

(b) Other tangible property - US$3,672,654

Vehicles US$162,299

Carpets and curtains from mosques US$243,777

Office furniture and equipment US$528,012

Loss of stock US$2,000,276

Printing press and workshop equipment US$738,290

425. The Ministry of Awqaf claims for the loss of, or damage to, tangible property including furniture, computers, office equipment and the contents of storage warehouses.

426. A few individual items of claim, such as the claim for vehicles, fall below the level of materiality adopted by the Panel and, therefore, as noted above, the Panel has neither requested nor reviewed any evidence other than submitted by the Ministry of Awqaf.

427. In respect of all items of claim, the Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses, and insufficient evidence.

428. In light of the above, the Panel recommends compensation in the amount of US$2,999,000 out of the US$3,672,654 claimed.

2. Payment or relief to others - US$8,655,689

(a) Relief paid to employees - US$8,655,689

429. The Ministry of Awqaf seeks compensation in the amount of US$8,655,689 for relief paid to employees.

430. The response of the Government of Kuwait to the Panel's questions regarding the Social Security Fund states that the amount claimed is based upon the employees' salaries before deduction of the social security contribution. The Panel accepts this statement.

431. The Panel, as set out at paragraph 36 above, accepts the compensability of such relief paid to employees subject to the percentage adjustment set out at paragraph 48 above, and the deduction of the employees' social security contribution.

432. In light of the above, the Panel recommends compensation in the amount of US$3,289,000 out of the US$8,655,689 claimed.

3. Income producing property - US$26,784,067

(a) Loss of revenue - US$26,784,067

433. The Endowments Secretariat, which prior to the invasion invested in real estate, asserts that it suffered losses resulting from a reduction of rental income that it would have earned from residential and commercial buildings for the period from the time of the invasion until December 1992. The Panel sought information about the revenue earned by the Endowments Secretariat and about any laws that could have affected the rent received by it in the period from 1990 to 1992. Adopting the principles set out above at paragraphs 51 to 58, the Panel finds that the loss of rental revenue is compensable during the occupation and emergency periods and for a reasonable period thereafter, to be determined by reference to various factors such as the nature and extent of damage done to the relevant buildings. The Panel finds, having regard to all the circumstances, including the nature of the damage done to the buildings, the late connection of electricity in certain areas, and the absence of running water until the middle of 1991, the reasonable period is the occupation and emergency periods plus a further eight months. Thus, the compensable period is 18 months.

434. The Panel has considered whether there were any savings in costs which should have been deducted from the claim and has concluded that no adjustment is necessary.

435. In light of the above, the Panel recommends compensation in the amount of US$15,938,000 out of the US$26,784,067 claimed.

4. Contract - US$822,031

(a) Contract interruption loss - US$822,031

436. At the time of the invasion, the Endowments Secretariat was supervising nine construction projects for investment properties throughout Kuwait. After the invasion, each of the contractors stopped work on the projects. After liberation, to complete the contracts, the contractors demanded and obtained additional amounts over and above the pre-invasion contract amounts. The Ministry of Awqaf claims the incremental cost of completion which varies from 15 per cent to 20 per cent of the amount remaining on the original contract.

437. The Panel finds that the price increase claimed is compensable in so far as it is attributable to the factors set out in paragraph 63 above; namely, site restoration costs, transportation costs and insurance costs. The Panel has calculated increases in relevant prices to arrive at an overall amount reflecting these factors. The evidence shows that only part of the price increase was attributable to the relevant factors and no amount was claimed for site restoration.

438. In light of the above, the Panel recommends compensation in the amount of US$275,000 out of the US$822,031 claimed.

R. Public Authority for Civil Information

Government Claim No. 50, UNCC Claim No. 5000179

Table 18. Summary Table for Public Authority for Civil Information

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Real property	2,750,594	2,008,000	439-441
Other tangible property	13,391,524	9,524,000	442-445
Temporary Bahrain office	3,384,452	2,294,000	446-449
Relief paid to employees	5,960,429	2,318,000	450-454
Loss of revenue	6,414,851	0	455-459
Pre-paid rent on office and warehouses	535,380	535,380	460-462
Total	32,437,230	16,679,380	
Interest	5,155,040		

1. Property losses

(a) Real property - US$2,750,594

439. The Public Authority for Civil Information ("PACI") maintains an information system about Kuwaiti and non-Kuwaiti citizens for the Government of Kuwait and, for that purpose, issues unified civil numbers and civil identification ("ID") cards to all residents of Kuwait. At the time of the invasion, PACI operated from two main offices. PACI claims the cost of repair to these two offices. Although PACI was the tenant in both offices, the Panel, following the approach set out above at paragraph 68, finds such costs to be compensable.

440. The Panel finds that adjustments should be made for inadequate accounting for depreciation and for insufficient evidence.

441. Accordingly, the Panel recommends compensation in the amount of US$2,008,000 out of the US$2,750,594 claimed.

(b) Other tangible property - US$13,391,524

Computers and other equipment	US$13,013,283
Furniture	US$286,744
Vehicles	US$91,497

442. PACI seeks compensation for the above tangible property losses.

443. Some of the amounts claimed fall below the level of materiality adopted by the Panel. In relation to those amounts, the Panel has neither requested nor reviewed any evidence other than that submitted by PACI.

444. The Panel finds that the claim in respect of computers was understated by US$1,861,000 due to the use of a rate of depreciation that was too high in the context of the Panel's approach to valuation. Additional adjustments are required for overstatement (concerning valuation of replacement computer equipment) and saved expenses (in respect of vehicles).

445. Accordingly, the Panel recommends compensation in the amount of US$9,524,000 out of the US$13,391,524 claimed.

2. Public service expenditures - US$3,384,452

(a) Temporary Bahrain office - US$3,384,452

446. PACI asserts that it incurred a variety of expenses as it was compelled to establish and operate an office in Bahrain from November 1990 until June 1992. This was necessary because civil information databases and central records had to be kept secure and maintained during the period of Iraq's invasion and occupation of Kuwait. PACI's claimed expenses include six main categories of expenditures: civil ID expenses, civil ID design, personnel expenses, rent, maintenance expenses, and operating expenses.

447. The Panel accepts these assertions as to the initial need to operate the Bahrain office and, applying the principles set out above at paragraph 79, finds that PACI's decision to establish and operate that office was reasonable in the circumstances and that the costs of so doing are compensable, subject to deductions for expenses that would ordinarily have been incurred by PACI in its operations in Kuwait. However, the Panel finds that it was not reasonable for the Bahrain office to be maintained beyond autumn 1991 when PACI's offices in Kuwait were ready for use and hence compensation for the costs claimed is limited to the period from early November 1990 to the end of October 1991.

448. The Panel issued Procedural Orders in December 1998 and April 1999 seeking information about, among other things, assets purchased for use and expenses incurred in Bahrain. The responses by the Government of Kuwait and other evidence indicate that adjustments should be made for overstatement and saved expenses.

449. Accordingly, the Panel recommends compensation in the amount of US$2,294,000 out of the US$3,384,452 claimed.

3. Payment or relief to others - US$5,960,429

(a) Relief paid to employees - US$5,960,429

450. PACI seeks compensation in the amount of US$5,960,429 for relief paid to employees.

451. The response of the Government of Kuwait to the Panel's questions regarding the Social Security Fund states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

452. The Panel, as set out at paragraph 36 above, accepts the compensability of such relief paid to employees subject to the percentage adjustment set out at paragraph 48 above.

453. The Panel finds that an adjustment should also be made for overstatement.

454. In light of the above, the Panel recommends compensation in the amount of US$2,318,000 out of the US$5,960,429 claimed.

4. Business transaction or course of dealing - US$6,414,851

(a) Loss of revenue - US$6,414,851

455. Prior to the invasion, PACI earned revenue from the levying of fees for ID cards. PACI claims for the loss of revenue resulting from its inability to issue and renew ID cards in the period beginning 1990 through June 1992. PACI uses a weighted average amount (that is, giving greater weight to more recent years) for the four years prior to the invasion to determine projected revenues. Actual revenues obtained by PACI for the 1991 and 1992 fiscal years are subtracted from the projected revenues for those years to arrive at the claim amount.

456. The Panel finds, applying the principles set out at paragraphs 51 to 58 above, that the loss of revenue is compensable for the period described in paragraph 52 above, subject to deductions for exceptional post-liberation revenue, for revenue that would have been earned from other Government departments and for saved expenses.

457. The Panel issued procedural orders seeking information about the method and basis for collecting fees with a view to ascertaining whether there had been any extraordinary revenues and any savings in expenses which should be brought into account. Financial statements and the responses to the requests in the procedural orders reveal that revenues increased

significantly in the fiscal year 1993. By analysing PACI's revenue-earning patterns, the Panel finds that account should be taken of the income earned in the period up to 30 June 1993. Accordingly, PACI's loss of revenue resulting from Iraq's invasion and occupation of Kuwait is US$4,235,000 up to 30 June 1993.

458. The Panel also finds that PACI did not incur certain substantial expenses, such as salaries, that it ordinarily would have incurred to generate the revenue claimed and in this regard recommends a deduction so as to reduce the claim to nil.

459. In light of the above, the Panel does not recommend any compensation for the claim for loss of revenue.

5. Other losses - US$535,380

(a) Pre-paid rent on office and warehouses - US$535,380

460. PACI seeks compensation for pre-paid rent on leased offices and on warehouse space. The rent was paid prior to the invasion for the period 1 July 1990 to 31 December 1990 and PACI seeks compensation for the amount of pre-paid rent referable to the period 2 August 1990 to 31 December 1990.

461. As set out at paragraph 84 above, compensation should be awarded for that portion of the pre-paid rent referable to the period that PACI was unable to use the premises as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that this period is 2 August 1990 to 31 December 1990.

462. In light of the above, the Panel recommends payment in full in the amount of US$535,380.

S. Ministry of Education

Government Claim No. 51, UNCC Claim No. 5000180

Table 19. Summary Table for Ministry of Education

Loss type/Loss element	Amount claimed US$	Amount Recommended US$	Paragraph references
Real property	72,947,330	37,154,000	463-467
Cash payments for repairs	6,088,680	5,328,000	468-471
Contract interruption loss	412,781	79,000	472-473
Loss of student files	14,359,998	1,047,000	474-479
Total	93,808,789	43,608,000	
Interest	14,908,320		

1. Real property - US$72,947,330

463. The Ministry of Education ("MOE") is the Government authority responsible for the administration of public education in Kuwait from kindergarten through to secondary school levels. Prior to Iraq's invasion and occupation of Kuwait, MOE administered a public education system with approximately 650 schools, 375,000 students, 26,000 teachers and 15,000 administrative staff. MOE asserts that during the occupation period many schools were damaged. It claims the cost of repairing them - a process which was carried out in two stages. In the first stage, immediately after liberation, school headmasters inspected damage and negotiated directly with contractors for initiation of urgent repair work. The second stage involved repair to the most heavily damaged schools and contracts were generally awarded after public tender procedures.

464. The Panel finds that the necessity for the rebuilding or repairing of the schools is a direct result of Iraq's invasion and occupation of Kuwait and is compensable. MOE states that 31 of the damaged or destroyed schools have not been repaired or replaced because they were located near the border between Kuwait and Iraq or at Failaka Island. The Panel, as set out above at paragraph 66, finds that the loss of or damage to such schools is nonetheless compensable.

465. The schools near the border between Iraq and Kuwait were all destroyed. In relation to five schools on Failaka Island, MOE claims the cost of reconstruction, rather than repair, although the schools are capable of repair. The Panel rejects this approach, considering that in this case only what would have been the reasonable cost of repair of the damaged schools is compensable.

466. Some adjustment in the amounts claimed should be made for method of valuation, inadequate accounting for depreciation, saved expenses, and insufficient evidence.

467. In light of the above, the Panel recommends compensation in the amount of US$37,154,000 out of the US$72,947,330 claimed.

2. Public service expenditures - US$6,088,680

(a) Cash payments for repairs - US$6,088,680

468. MOE claims compensation for cash payments made to headmasters in the period March to August 1991 that were used for immediate cleaning and minor repair work to the schools. Most of the money is said to have been used to hire day labourers and to buy materials like tools, cleaning solvents, and window panes.

469. The Panel is satisfied that the cost of repairs claimed under this loss element does not duplicate the claim for real property losses set out at paragraphs 463 to 467 above. The Panel finds that this loss element is compensable on the same basis as other claims for the cost of repairs.

470. The Panel finds that adjustments should be made for insufficient evidence.

471. The Panel accordingly recommends compensation in the amount of US$5,328,000 out of the US$6,088,680 claimed.

3. Contract - US$412,781

(a) Contract interruption loss - US$412,781

472. Prior to Iraq's invasion and occupation of Kuwait, MOE entered into a contract for the construction of additional classrooms at a number of public schools. By the time of liberation it is claimed that 35 per cent of the work under the contract was completed. To complete the project, the contractor initially sought a 25 per cent price increase but after negotiation agreed to no more than a 10 per cent increase. MOE claims this amount as compensation.

473. The Panel finds that the price increase claimed is compensable in so far as it is attributable to the factors set out in paragraph 63 above, namely, site restoration costs, transportation costs and insurance costs. The Panel has calculated increases in relevant prices to arrive at an overall amount reflecting these factors. The Panel has examined only the

evidence submitted with the claim, given that the amount claimed falls below the level of materiality adopted by the Panel. The evidence shows that only part of the price increase was attributable to the relevant factors. Accordingly, the Panel recommends compensation in the amount of US$79,000 out of the US$412,781 claimed.

4. Other losses - US$14,359,998

(a) Loss of student files - US$14,359,998

474. Prior to Iraq's invasion and occupation of Kuwait, MOE maintained 375,000 student files containing personal and academic information, such as the student's birth certificate, grades received and medical history. MOE claims that approximately 60 per cent of the files, a total of 225,000, were damaged or destroyed during the occupation period. MOE claims for the cost of materials, labour and inconvenience (namely, the value of the lost information) resulting from the damage and destruction. MOE has noted in a supplemental submission that, as the files were a tangible form of data, the costs of recreating them could also be viewed as a tangible property loss (rather than an "other" loss).

475. The Panel issued Procedural Order 23 on 1 March 1999 to obtain information, among other things, as to the use to which the information in the files was put and as to whether all of the information in the files was available. The response noted that no separate records were kept of the cost of preparing new student file folders and that some information, usually held on file, is not now available. The response also recognised that there are two distinct aspects to the claim. First, there is the loss of materials such as paper and folders and, second, there is the loss of much of the information contained in the files. MOE's valuation method attributes a value to both aspects of the loss, although MOE acknowledges in its response that the information in the files was not used to generate income and, therefore, had no commercial value.

476. The Panel finds that the loss of the files is compensable. Compensation should therefore be awarded to represent the reasonable cost of the materials and labour which would be incurred in reassembling the files. Thus, the approach chosen by MOE to value this loss is not appropriate and, accordingly, the Panel proceeds to value it on the basis just mentioned. The Panel finds this cost to be US$2,023,000.

477. A further consequence of the valuation approach adopted by the Panel is that the exchange rate chosen by MOE (the average month-end rates for February 1993 to January 1994) is not appropriate. MOE used an exchange rate for a one year period as it considered the claim as one relating to estimated future payments. The Panel, in contrast, considers that a

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reasonable time for commencing the work and paying for it would have been during the last quarter of 1991 and uses the exchange rate of KD 1 = US$3.497 then generally prevailing. This exchange rate was higher than the exchange rate used by MOE. This results in a notional addition to the claim in the amount of US$70,000.

478. The Panel also finds that a reduction should be made for insufficient evidence.

479. The Panel therefore recommends compensation in the amount of US$1,047,000 out of the US$14,359,998 claimed.

T. Ministry of Social Affairs and Labour

Government Claim No. 56, UNCC Claim No. 5000188

Table 20. Summary Table for Ministry of Social Affairs and Labour

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Contract interruption loss	372,181	230,000	480-484
Other tangible property	3,136,583	1,229,000	485-488
Cash	2,186,254	1,530,000	489-491
Relief paid to employees	53,177,826	18,881,000	492-496
Total	58,872,844	21,870,000	
Interest	9,356,560		

1. Contract - US$372,181

(a) Contract interruption loss - US$372,181

480. The Ministry of Social Affairs and Labour ("MSAL") is responsible for granting work permits to non-Kuwaitis. It also operates Kuwait's retirement homes, social care centres, and handicap centres.

481. MSAL asserts that at the time of the invasion it was supervising three projects, all of which were interrupted by the invasion. The contract for the first project, the replacement of a fresh water pipe network at its social care complex in Sulaibikhat, had not been formally concluded at the time of the invasion. In fact, even the bidding and contractor selection procedures had not been completed. In respect of this project, MSAL claims the difference between its estimate of what the contract price would have been if the contract had been finalised before the invasion and the price actually paid for the work after liberation. The Panel finds, applying the principles contained in paragraph 59 above, that there is insufficient evidence of consensus as to the essential provisions of the pre-invasion contract and so does not recommend any compensation for the "interruption" of this first project.

482. For the other two projects, contracts were in existence at the time of the invasion. The first project was for the supply and installation of air handling units at MSAL's social care complex in Sulaibikhat. The second was for the installation, operation and maintenance of air conditioners in other MSAL facilities in Kuwait. After liberation, the contracts were renegotiated with a 20 per cent price increase. In addition, an amount was paid by MSAL for the cost of site restoration in relation to the contract for air conditioners.

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483. The Panel finds that the price increase claimed is compensable in so far as it is attributable to the factors set out in paragraph 63 above; namely, site restoration costs, transportation costs and insurance costs. The Panel has calculated increases in relevant prices to arrive at an overall amount reflecting these factors. The Panel has examined only the evidence submitted with the claim, given that the amount claimed falls below the level of materiality adopted by the Panel. The evidence shows that only part of the price increase was attributable to the relevant factors.

484. Accordingly, the Panel recommends compensation in the amount of US$230,000 out of the US$372,181 claimed.

2. Other tangible property - US$3,136,583

Motor vehicles	US$671,211
Furniture, office equipment and supplies	US$1,218,655
Residential facilities equipment	US$1,246,717

485. MSAL claims for the loss of 96 motor vehicles (automobiles, trucks and buses), damage to and loss of furniture, office equipment and supplies (both from its numerous facilities and from storage areas) and the loss of specialized equipment such as medical and therapeutic equipment from its social care, handicap, retirement, and children's facilities.

486. A number of individual claim items, such as the claim for the automobiles and the claim for the trucks, fell below the level of materiality adopted by the Panel. The Panel has therefore neither requested nor reviewed any evidence other than that submitted by MSAL in relation to these items.

487. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses, method of valuation, and insufficient evidence.

488. In light of the above, the Panel recommends compensation in the amount of US$1,229,000 out of the US$3,136,583 claimed.

3. Bank accounts and securities - US$2,186,254

(a) Cash - US$2,186,254

489. MSAL seeks compensation for the loss of cash held in safes in its various offices and facilities. MSAL asserts that this cash was kept on hand to cover daily operational expenses and for distribution to the poor and that it was taken during the occupation period.

490. The Panel finds the claim is compensable subject to there being probative evidence, such as contemporaneous records or witness testimony, as to amounts ordinarily held by MSAL. An adjustment should be made for insufficient evidence.

491. Accordingly, the Panel recommends compensation in the amount of US$1,530,000 out of the US$2,186,254 claimed.

4. Payment or relief to others - US$53,177,826

(a) Relief paid to employees - US$53,177,826

492. MSAL seeks compensation in the amount of US$53,177,826 for relief paid to employees.

493. The response of the Government of Kuwait to the Panel's questions regarding the Social Security Fund states that the amount claimed is based upon the employees' salaries before deduction of the social security contribution. The Panel accepts this statement.

494. The Panel, as set out at paragraph 36 above, accepts the compensability of such relief paid to employees subject to the percentage adjustment set out at paragraph 48 above, and the deduction of the employees' social security contribution.

495. The evidence has revealed an understatement in MSAL's claim and the Panel has therefore made a notional increase to the claimed amount to take this into account. However, the Panel finds that an adjustment should also be made for insufficient evidence.

496. In light of the above, the Panel recommends compensation in the amount of US$18,881,000 out of the US$53,177,826 claimed.

U. Public Authority for the Assessment of Compensation for Damages Resulting from Iraqi Aggression

Government Claim No. 61, UNCC Claim No. 5000193

Table 21. Summary Table for Public Authority for the Assessment of Compensation for Damages Resulting from Iraqi Aggression

Loss type/Loss element	Amount claimed US$	Amount recommended US$	Paragraph references
Claim preparation costs	217,107,139	0	497-500
Total	217,107,139	0	
Interest	84,443,216		

1. Claim preparation costs - US$217,107,139

(a) Claim preparation costs - US$217,107,139

497. The Public Authority for the Assessment of Compensation for Damages Resulting from Iraqi Aggression ("PAAC"), which was established in May 1991 and began operations in August 1991, is the sole Government of Kuwait authority for matters concerning the preparation and processing of claims before the Commission. The Government states that PAAC's work includes:

(a) assisting the citizens of Kuwait, citizens of some countries which are members of the GCC, the businesses of Kuwait and the Government in the preparation of their claims filed with the Commission;

(b) providing a central depository and archive system for all claims filed by Kuwaiti citizens, some GCC citizens, Kuwaiti businesses and the Government; and

(c) providing a mechanism for the disbursement of funds awarded.

498. PAAC's claim is for the costs incurred in preparing and processing the claims including salaries and benefits paid to PAAC employees, expenditure on goods and services, primarily consisting of the cost incurred to hire independent consultants, on fixed assets and equipment, costs associated with the renovation and maintenance of facilities and other expenses incurred by PAAC employees such as travel and training seminars.

499. The original claim, submitted in 1994 and seeking US$118,667,819, included actual expenditures for the fiscal years ended 30 June 1992 and 1993 and budgeted expenditures for 1994 and 1995. The supplemental claim

filed by PAAC in May 1998 includes actual expenditures for 1992 to 1997, budgeted expenditures for 1998 and 1999 and estimated expenditures for 2000 to 2003.

500. In light of the consideration of this matter in paragraphs 92 to 94 above, the Panel does not make any recommendation with respect to this claim.

VII. SUMMARY OF RECOMMENDATIONS

501. The following is a summary showing, for each first instalment claim, the principal claim amount and the Panel's recommended award.

Table 22. Summary of the principal claim amount and the Panel's recommendation for each first instalment claim

Claimant	Principal claim amount (US$)	Recommendation (US$)
Public Authority for Youth and Sports	8,073,928	3,770,000
Ministry of Finance - Kuwait Emergency Reconstruction Office	389,188,073	300,863,000
Amiri Diwan	7,391,290	4,722,000
Ministry of Finance	936,570,995	726,000,000
Ministry of Interior	292,631,800	103,123,000
Kuwait Fund for Arab Economic Development	9,263,851	3,450,926
State Audit Bureau	4,529,148	2,054,857
Council of Ministers	26,690,866	12,782,000
Department of Legal Advice and Legislation	2,413,083	1,153,117
Civil Service Commission	4,284,506	1,764,270
Ministry of Higher Education	2,515,858	1,476,518
Ministry of Commerce and Industry	20,937,074	10,087,000
National Committee for Missing and Prisoners of War's Affairs 61/	111,483,429	177,109,000
Kuwait News Agency	24,541,693	6,915,457
Ministry of Justice	81,311,962	52,463,000
Ministry of Awqaf and Islamic Affairs	68,075,121	42,316,000
Public Authority for Civil Information	32,437,230	16,679,380
Ministry of Education	93,808,789	43,608,000
Ministry of Social Affairs and Labour	58,872,844	21,870,000
Public Authority for the Assessment of Compensation for Damages Resulting from Iraqi Aggression	217,107,139	0
Total	2,392,128,679	1,532,207,525

Geneva, 13 September 1999

(*Signed*) Sir Elihu Lauterpacht
Chairman

(*Signed*) Andrew Jacovides
Commissioner

(*Signed*) Reiner Soll
Commissioner

Notes

1/ A text of which is annexed to decision 10 (S/AC.26/1992/10).

2/ Plus the daily amounts referred to in Table 14.

3/ S/AC.26/1998/R.22.

4/ The U.S. Army Corps of Engineers held documents in Winchester in relation to the claim of the Ministry of Finance - Kuwait Emergency Reconstruction Office (see paragraph 134).

5/ S/AC.26/1991/7/Rev.1.

6/ S/AC.26/1992/15.

7/ Notably, "Report and recommendations made by the Panel of Commissioners concerning the first instalment of individual claims for damages up to US$100,000 (category "C" claims)" (S/AC.26/1994/3), at part II, section D.

8/ Paragraph 9 of Governing Council decision 15 (S/AC.26/1992/15) states that: "The duty to mitigate applies to all claims".

9/ "Report of the Secretary-General on the scope and nature of the damage inflicted on the Kuwaiti infrastructure during the Iraqi occupation" (S/22535).

10/ At paragraphs 370 and following.

11/ Quoted in paragraph 21.

12/ Section II of Governing Council decision 9 (S/AC.26/1992/9) provides at paragraph 13 that "[i]n a case where business property had been lost because it had been left unguarded by company personnel departing due to the situation in Iraq and Kuwait, such loss may be considered as resulting directly from the invasion and occupation". The Panel finds this statement equally applicable to the Government of Kuwait's property left unguarded.

13/ See, for example, "Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of individual claims for damages above US$100,000 (category "D" claims)" (S/AC.26/1998/1), at paragraphs 267-269.

14/ As a result of Iraq's response to Procedural Order 1 in relation to the claim of the Ministry of Interior (UNCC Claim No. 5000137), the Panel made enquiries in relation to the extent to which the employees had received payment of their salaries in advance prior to the invasion. The Panel also notes that a few employees who received relief payments retrospectively also received payment for work done during the relevant period. The Panel has, in arriving at the percentage deduction to the claims for relief paid to employees set out in paragraph 48, taken into account the advance payments and the payments for work done.

15/ The Panel has considered the nature of economic activity in Kuwait and has concluded that this situation is explained by the fact that many Kuwaitis are owners or part-owners of businesses from which they derive income in addition to their salaried employment.

16/ The relief provided by the Government of Kuwait covered such items as living expenses while outside Kuwait, the provision of free utilities within Kuwait (by the forgiveness of payment therefor), the forgiveness of consumer debt, the forgiveness of certain rental payments, the distribution of free food, and the payment of a grant to each Kuwaiti individual who remained in Kuwait during the occupation period.

17/ The Panel notes that the response was compiled applying Government of Kuwaiti national accounts and statistics and on the basis of certain assumptions regarding income and expenditure patterns, and has made suitable allowance for the use of such techniques in quantifying its findings.

18/ Amounts provided for living expenses outside Kuwait during the period (under a programme set up by the Ministry of Finance and the subject of UNCC Claim No.5000112) were paid in respect of additional living expenses and do not comprise "compensation received elsewhere". Further, the Panel has not included in its consideration any relief provided for losses other than loss of income, such as relief in respect of loss of amenity, again to ensure that compensation is based upon the employees' true financial losses.

19/ See paragraph 42.

20/ A large percentage of the 60 per cent deduction arises in respect of "saved expenses".

21/ Governing Council decision 9 (S/AC.26/1992/9).

22/ See paragraph 87.

23/ Where the formation of a formal contract was not complete at the time of the invasion, the Panel finds that there ought to be compensation for contract interruption losses only when there is evidence of consensus at the time of the invasion as to the essential provisions of the contract (being the identification of the parties, the principal undertakings and the price to be paid).

24/ "Report and recommendations made by the Panel of Commissioners concerning part two of the first instalment of claims by governments and international organizations (category "F" claims)" (S/AC.26/1998/4), paragraphs 70-72.

25/ Increased transport costs arise because some of Kuwait's ports of entry remained closed until October 1991, during which time shipments were landed elsewhere and goods then transported to Kuwait over land. The types of insurance costs include all risks and public liability insurance.

26/ "Report and recommendations made by the Panel Of Commissioners concerning part one of the first instalment of claims by governments and international organizations (category "F" claims)" (S/AC.26/1997/6), at paragraph 106.

27/ The Panel views the decision of the "F1" panel in relation to pre-paid rent set out in, for example, "Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of claims by governments and international organizations (category "F" claims)" (S/AC.26/1997/6) at paragraph 74 as turning on the particular facts found by the "F1" panel.

28/ As stated at paragraph 36, the Panel finds that the relief paid to employees is compensable (on the basis of paragraph 36 of decision 7) as being payment or relief to others. This categorisation is based on a finding that the Government of Kuwait did not, in fact, pay the salaries of its Kuwaiti and GCC employees during the occupation and emergency periods. What it paid, in fact, was an amount of relief measured by reference to the salaries that those employees would otherwise have received. Those salaries therefore constitute a saved expense.

29/ Which, amongst other things, manages the Government's general reserve and future generations funds.

30/ The claim on behalf of the Public Authority for the Assessment of Compensation, UNCC Claim No. 5000193.

31/ (S/AC.26/Dec.18) (1994), at paragraph 1.

32/ (S/AC.26/1996/5/Annex.) ("WBC Report") at paragraphs 227-230.

33/ An exception to this is the claim of the National Committee for Missing and Prisoner of War's Affairs where the date of loss for calculation of interest is determined to be 31 October 1997 (see paragraph 344).

34/ The Panel has considered the three periods during which a document may have come into existence: prior to Iraq's invasion of Kuwait; during the occupation and emergency periods; and thereafter. The Panel accepts that the number and quality of documents which may be expected to exist will vary according to each such period.

35/ Within the loss types (that is, those appearing on the Form F) the claimants have further subdivided the losses into categories which the Panel will refer as "loss elements". For example, "loss of revenue" is a loss element within the "business transaction or course of dealing" loss type. The Panel has approached its review of the claims and their supporting evidence by reference to loss elements as opposed to the more general loss types.

36/ See paragraph 115.

37/ For a description of the oil well fires see the WBC Report at paragraphs 36-37.

38/ Such as competition between the eight contractors mentioned in paragraph 134 or between a wider range of contractors.

39/ WBC Report at paragraphs 196-200 and "Report and recommendations made by the Panel of Commissioners concerning the second instalment of "E1" claims" (S/AC.26/1999/10) at paragraphs 276-280. Further, the Panel has investigated the issue and is satisfied that there is no duplication between KERO's claim in relation to the airlift of fire-fighting equipment and the claims for freight costs that were considered in these two reports.

40/ The Government of Kuwait submits that in some instances the amount of allowance was not set by decree but by internal memorandum.

41/ "Report and recommendations made by the Panel of Commissioners concerning the first instalment of "E2" claims" (S/AC.26/1998/7) at paragraphs 158-162.

42/ As set out in paragraph 192, the claimant revised the amount expended under this loss type from US$144,394,897 to US$57,700,000.

43/ At the time the original claim was submitted it was expected that the building would be completed in October 1994. The lease of the temporary premises required payment in advance for each half-year and so SAB claims rent until 31 December 1994. SAB later asserted that the actual relocation date was August 1996.

44/ For the first engineer, the period from 1 February 1992 to 24 July 1993 is 17.8 months - the same period of time he would have worked in the absence of the invasion. For the second engineer, the period between 16

May 1992 and 24 July 1993 is 14.3 months - less than the period of time he would have worked in the absence the invasion.

45/ WBC Report at paragraph 86.

46/ A comprehensive discussion of these costs is set out in paragraphs 341 to 343.

47/ This statement accords with the "Report of the Third Panel established pursuant to the note by the President of the Security Council of 30 January 1999, on Prisoners of War and Kuwaiti Property" (S/1999/100), which states at paragraph 22 that of an original list of 628 missing individuals submitted to the ICRC, twenty were "found to have dual names".

48/ The response to Procedural Order 30 states that the original list of 625 included 17 instances of "dual names". It also reveals that, between the two submissions, a further 13 names were removed from the list and 10 new names were added to it. These changes explain the net reduction of 20 names which took place between the dates of the two submissions. However, despite being requested by the Panel in Procedural Order 30 to explain the circumstances under which each of the twenty Individuals had been "accounted for", the Government of Kuwait has not provided evidence of the reasons for the removal of 12 of the further 13 names referred to above. For one of the 13 removed from the list, it is submitted by Iraq that his file was closed in 1996. The Panel therefore accepts the Government of Kuwait's submission that he was removed from the list in February 1996. The Panel also notes that the 10 "new" names have not been submitted as part of the COM Committee's claim and are, accordingly, not eligible for compensation. Thus, up to 1 February 1996, the number to be treated as missing is 596 comprising the 625 asserted cases less the 17 instances of "dual names", less the 12 cases for which sufficient information as to the reasons for removal from the list has not been provided. The number to be treated as missing from 1 February 1996 is 595.

49/ This provides that "payments are also available to reimburse payments made or relief provided by Governments or international organizations to others - for example to nationals, residents or employees or to others pursuant to contractual obligations - for losses covered by any of the criteria adopted by the Council".

50/ "Report and recommendations made by the Panel of Commissioners concerning the first instalment of individual claims for damages up to US$100,000 (category "C" claims)" (S/AC.26/1994/3) at paragraphs 125-126; "Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of individual claims for damages up to

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US$100,000 (category "D" claims)", ("First D Report"), (S/AC.26/1998/1), at paragraphs 215-218.

51/ First D Report at paragraph 218.

52/ The COM Committee commenced making the support payments on 1 June 1991. The Panel chose 1 August 1999 as the date upon which the calculation of the present value of the future family support payments should be made.

53/ If, subsequent to the making of this recommendation, the Panel or the Commission learn that one or more of the Missing have been released or otherwise accounted for, then a corresponding correction will be made to this amount.

54/ Some of the employees who failed to return were of Jordanian or Palestinian origin. In its response to Procedural Order 1, Iraq asserted that there were various factors that led to the failure of these employees to return to Kuwait after liberation. Having investigated the issue, and considered all the evidence and information available, the Panel has concluded that there is insufficient evidence to demonstrate that the failure of Jordanian and Palestinian employees to return to Kuwait was a direct result of Iraq's invasion and occupation of Kuwait.

55/ The amount claimed was originally US$409,653 but, in its response to Procedural Order 16, the Government of Kuwait amended it to US$303,623 to reflect a change in the number of new employees for whom hiring costs were incurred.

56/ See endnote 55 for an explanation of the reason for the revision.

57/ KUNA submitted after it filed its original claim that the actual relocation date was December 1996.

58/ Including about 50 per cent of the articles on non-Gulf Arab countries but none of the articles on Kuwait and Kuwaiti personalities.

59/ These items are still being used by the COM Committee, the successor to the MOJ Committee.

60/ Although reference is made to the "MOJ Committee" and the "COM Committee" (defined in paragraph 326) there has only ever been one committee in relation to individuals missing as a result of Iraq's invasion and occupation of Kuwait. It operated first under the auspices of the Ministry of Justice and now operates under the auspices of the Council of Ministers.

61/ Plus the daily amounts referred to in Table 14

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Annex VIII

Decision concerning the first instalment of F3 claims taken by the Governing Council of the United Nations Compensation Commission at its 92nd meeting, held at Geneva on 9 December 1999*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure, the report and recommendations made by the panel of Commissioners concerning the first instalment of "F3" claims, covering twenty claims, 1/

1. Approves the recommendations made by the panel of Commissioners, and accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amount awarded, as noted in paragraph 501 of the report, is as follows:

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (US$)	Amount of compensation recommended (US$)
Kuwait	19	1	2,392,128,679	1,532,207,525

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* Previously issued as document S/AC.26/Dec.84 (1999).

[1] The text of the report appears in document S/AC.26/1999/24 (annex VII above).

3. Reaffirms that when funds become available payments shall be made in accordance with decision 73 (S/AC.26/Dec.73 (1999)).

4. Recalls that when payments are made in accordance with decision 73 (S/AC.26/Dec.73 (1999)) and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), the Government of the State of Kuwait shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution.

5. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to the Government of the State of Kuwait.

Annex IX

Eighth report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure*

1. The present report identifies, pursuant to article 41 of the Provisional Rules For Claims Procedure (S/AC.26/1992/10) (the "Rules"), corrections to approved claim awards in categories "A" and "C" and clerical corrections to an approved category "C" report.

I. CORRECTIONS TO CATEGORY "A" CLAIM AWARDS

2. Decision 21 (S/AC.26/Dec.21 (1994)) of the Governing Council states that "any claimant who has selected a higher amount under category 'A' (US$4,000 or US$8,000) and has also filed a category 'B', 'C' or 'D' claim will be deemed to have selected the corresponding lower amount under category 'A'". As previously reported, the creation of the enhanced cross-category matching programme has enabled the Commission to check claims data across several claims categories. The Commission previously applied the high "A" matching programme to the first four instalments of category "A" claims against all claims data in categories "B", "C" and "D" in order to determine those claims that were filed for higher amounts in category "A" and that also have claims in those other categories. The resulting corrections were reported in the sixth and seventh article 41 reports (S/AC.26/1999/12 and S/AC.26/1999/19).

3. This report contains recommendations for corrections to category "A" claims as a result of applying the high "A" matching programme to the fifth and sixth instalments of category "A" claims. Claimants with claims that were filed for the higher amount in category "A" that have been found to have filed claims in other categories have had their claim amounts adjusted downward in accordance with decision 21. A total of 4,385 such claims from 26 Governments and 5 international organizations were detected. The adjusted claim awards for the fifth and sixth instalments, and the total revised recommended awards for category "A" claims, are located in tables 1-3 of annex I.

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* Previously issued as document S/AC.26/1999/25.

II. CORRECTIONS TO CATEGORY "C" CLAIM AWARDS

4. Corrections to category C claim awards include corrections relating to the reallocation with respect to departure and relocation costs ("C1-Money" losses) and "C4" personal property losses ("C4-CPHO" losses), the transfer of compensable loss elements from duplicate claims to valid claims, the correction of technical defects in claims for "C6" salary losses and other miscellaneous corrections.

1. Reallocation of loss elements and reapplication of the statistical valuation models

5. The category "C" Panel directed the secretariat to reallocate losses related to departure and relocation costs located on the C1 page of the claim form ("C1-Money losses") and C4 personal property losses ("C4-CPHO" losses), where recommended amounts were less than 35 per cent of the amount claimed. Considering the recommendations of the Governing Council during its twenty-ninth session on 30 September 1998, the Panel further directed the secretariat to reallocate C4-CPHO losses whereby the method of data input in respect of those losses is modified for claims in which there is a difference of 50 per cent or more between the amount of compensation claimed and the amount of compensation awarded.

6. As noted in paragraphs 193-198 of the report on the seventh instalment claims (S/AC.26/1999/11), the reallocation exercise for the C4-CPHO claims, and for losses related to departure and relocation costs located on the C1 page of the claim form ("C1-Money losses"), was implemented for the claims reported in the seventh instalment. Following the reallocation of amounts, the statistical models used to value the C4-CPHO and C1-Money losses were then reapplied.

7. At the time of the seventh instalment report it was anticipated that only claims reported in the second to sixth instalments would be subject to the same reallocation and would be reported in a future article 41 report. However, the secretariat determined that the model used to value C4-CPHO losses in the seventh instalment had reflected the allocation of amounts prior to the reallocation rather than after the reallocation. Therefore, the C4-CPHO linear regression model has been reapplied to all claims that were reported in instalments two through seven that contained C4-CPHO losses. The corrections in this report therefore include 7,625 claims that were reported in the seventh instalment and that have increased award amounts for C4-CPHO losses.

8. The secretariat has corrected results in all cases where C1-Money or C4-CPHO awards, or both, were increased as a result of the above actions. As reflected in table 1 below, awards were increased in 663 claims for C1-Money losses, for a total increase of US$374,044.76. Table 2 identifies

the corrections made to C4-CPHO losses, where 21,491 claims have had their awards increased, with a total increase of US$63,777,771.37.

Table 1. Results of reallocation of loss amounts and reapplication of the valuation models for C1-Money losses

Government	Instalment	Total number of claims affected	Amount of increase US$
Algeria	Fifth	1	133.78
Australia	Fifth	1	563.75
	Sixth	5	2,973.06
Bangladesh	Fifth	5	4,211.67
	Sixth	6	2,384.11
Belgium	Sixth	1	3,777.75
Canada	Fifth	10	3,929.40
	Sixth	11	6,591.80
France	Fifth	3	5,387.24
	Sixth	4	6,870.56
Germany	Fifth	2	3,694.53
Hungary	Sixth	1	2,130.48
India	Fifth	241	62,955.29
	Sixth	129	32,932.32
Ireland	Fifth	1	500.32
Jordan	Fifth	55	68,365.31
	Sixth	29	27,878.78
Lebanon	Fifth	1	94.55
	Sixth	2	527.87
Morocco	Fifth	4	1,475.14
	Sixth	2	106.61
Netherlands	Fifth	2	2,123.33
	Sixth	1	1,409.62
New Zealand	Sixth	2	924.59
Pakistan	Fifth	6	4,617.45
	Sixth	8	5,398.51
Philippines	Fifth	3	1,473.50
	Sixth	2	554.03
Poland	Fifth	1	1,617.33
Senegal	Sixth	1	3,684.87
Spain	Sixth	1	2,448.29
Sri Lanka	Fifth	2	1,754.54
	Sixth	1	442.46
Sweden	Sixth	1	910.83

Government	Instalment	Total number of claims affected	Amount of increase US$
Switzerland	Sixth	1	815.18
Thailand	Sixth	2	645.38
Tunisia	Fifth	5	1,419.52
	Sixth	7	2,481.78
Turkey	Fifth	2	3,632.08
	Sixth	1	3,312.22
United Kingdom of Great Britain and Northern Ireland	Fifth	25	17,588.22
	Sixth	26	22,020.59
United States of America	Fifth	10	8,878.16
	Sixth	17	25,462.56
Yemen	Sixth	2	475.13
Yugoslavia, Federal Republic of	Fifth	1	1,788.05
UNDP Jerusalem	Fifth	1	3,485.26
	Sixth	1	688.00
UNDP Washington	Fifth	4	1,627.16
	Sixth	4	2,316.07
UNDP Yemen	Sixth	1	4,631.29
UNHCR Canada	Sixth	5	7,484.99
UNRWA Gaza	Sixth	1	449.44
Total		663	US$374,044.76

Table 2. Results of reallocation of loss amounts and reapplication of the valuation models for C4-CPHO losses

Government	Instalment	Total number of claims affected	Amount of increase US$
Afghanistan	Seventh	112	132,141.61
Algeria	Second	1	9,431.25
	Sixth	2	21,235.85
	Seventh	2	3,932.15
Australia	Fourth	2	14,426.62
	Sixth	12	66,667.94
	Seventh	7	22,183.37
Austria	Fifth	1	6,795.62
	Sixth	3	29,850.97
Bahrain	Fifth	2	8,188.35

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Government	Instalment	Total number of claims affected	Amount of increase US$
Bangladesh	Second	92	85,821.17
	Fourth	4	4,130.38
	Fifth	132	257,706.96
	Sixth	238	442,832.27
	Seventh	163	155,270.26
Belgium	Second	1	14,308.63
Bosnia-Herzegovina	Second	1	7,288.83
Bulgaria	Second	2	1,349.88
	Fourth	1	757.62
	Sixth	8	18,937.99
Canada	Second	13	164,697.04
	Fifth	24	294,886.63
	Sixth	31	284,053.70
	Seventh	25	94,989.81
Chad	Fifth	1	5,178.14
China	Sixth	5	8,479.21
	Seventh	1	590.87
Croatia	Fifth	1	10,917.34
	Sixth	4	17,240.30
	Seventh	2	1,121.67
Czech Republic	Second	3	5,214.89
	Fourth	2	3,616.01
	Fifth	4	12,159.05
	Sixth	1	432.90
Denmark	Sixth	2	12,403.93
	Seventh	1	7,203.35
Egypt	Second	713	1,887,719.25
	Third	466	1,106,651.88
	Fourth	1,611	5,171,224.34
	Fifth	494	1,138,709.03
	Sixth	531	2,051,520.08
	Seventh	2,530	2,613,870.04
Ethiopia	Sixth	2	3,003.50
Finland	Seventh	1	259.52
France	Fourth	1	1,755.35
	Fifth	4	34,181.05
	Sixth	8	54,234.43
	Seventh	17	58,483.84

Government	Instalment	Total number of claims affected	Amount of increase US$
Germany	Second	1	5,253.60
	Fourth	1	15,577.86
	Fifth	4	47,159.54
	Sixth	6	81,081.16
	Seventh	5	20,761.96
Greece	Fifth	2	15,528.07
	Sixth	2	15,828.49
Hungary	Second	3	16,783.69
	Fourth	1	2,242.72
	Fifth	1	5,989.82
India	Second	767	2,150,961.14
	Fourth	601	1,028,392.20
	Fifth	1,180	2,435,166.84
	Sixth	1,254	3,201,206.10
	Seventh	1,256	1,036,883.02
Iran, Islamic Republic of	Second	19	126,945.94
	Fifth	15	134,082.65
	Sixth	58	311,754.39
	Seventh	117	120,770.68
Ireland	Second	2	15,970.54
	Fourth	1	7,743.21
	Fifth	2	8,403.04
	Sixth	10	56,813.78
	Seventh	3	11,743.98
Israel	Second	1	12,743.27
	Seventh	14	49,538.03
Italy	Fifth	1	11,732.90
	Sixth	4	37,823.67
	Seventh	2	9,222.80
Japan	Fourth	3	25,472.83
	Fifth	1	8,376.87
	Sixth	1	13,471.89
Jordan	Second	85	488,122.72
	Fourth	50	343,730.78
	Fifth	211	1,312,395.53
	Sixth	364	2,463,535.21
	Seventh	826	1,193,689.62
Kenya	Sixth	1	3,558.15

Government	Instalment	Total number of claims affected	Amount of increase US$
Kuwait	Fourth	1,608	9,257,956.34
	Fifth	478	4,404,498.47
	Sixth	61	720,892.81
	Seventh	1,063	2,290,836.12
Lebanon	Second	42	387,304.57
	Fifth	17	142,569.62
	Sixth	37	375,185.46
	Seventh	37	100,163.94
Malta	Sixth	1	2,024.70
Mauritius	Second	1	4,831.56
	Fourth	2	3,703.42
	Sixth	1	5,809.76
	Seventh	1	1,787.80
Morocco	Second	1	5,631.99
	Fifth	1	15,920.17
	Sixth	1	10,077.30
	Seventh	2	4,301.14
Netherlands	Fifth	1	5,110.48
	Sixth	3	43,328.65
	Seventh	5	6,797.69
New Zealand	Fourth	1	1,191.99
	Fifth	1	7,322.29
	Sixth	1	8,769.17
	Seventh	2	773.12
Niger	Second	1	677.39
Nigeria	Second	6	5,861.84
	Seventh	7	2,543.16
Norway	Sixth	1	13,174.29
	Seventh	1	373.05
Pakistan	Second	8	27,815.41
	Fourth	92	194,548.40
	Fifth	81	276,726.69
	Sixth	254	692,040.85
	Seventh	254	316,978.43
Philippines	Second	21	14,733.47
	Fourth	19	15,031.46
	Fifth	142	136,509.77
	Sixth	172	211,451.56
	Seventh	166	87,198.94

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Government	Instalment	Total number of claims affected	Amount of increase US$
Poland	Second	8	33,548.23
	Fourth	2	12,433.83
	Fifth	2	11,418.97
	Sixth	18	83,838.47
Republic of Korea	Second	1	8,504.95
	Fifth	4	50,708.21
	Sixth	6	57,937.18
Sierra Leone	Second	1	13,264.63
	Seventh	1	4,800.76
Slovakia	Fourth	1	1,187.47
	Seventh	1	68.84
Somalia	Sixth	4	13,340.23
	Seventh	5	5,024.99
Spain	Sixth	1	13,498.33
	Seventh	1	3,843.67
Sri Lanka	Second	55	30,202.79
	Fifth	205	110,512.51
	Sixth	183	110,048.77
	Seventh	284	99,978.51
Sudan	Second	52	115,473.41
	Fifth	200	411,271.18
	Sixth	209	538,199.28
	Seventh	118	77,163.01
Sweden	Second	6	60,432.74
	Fifth	2	21,649.92
	Sixth	8	80,167.35
	Seventh	2	10,319.19
Switzerland	Sixth	2	11,855.22
Syrian Arab Republic	Fifth	315	876,678.86
	Sixth	470	2,168,004.62
	Seventh	264	244,137.10
Thailand	Second	1	997.40
	Fifth	2	6,487.54
	Sixth	5	17,597.26
	Seventh	1	1,056.81
Tunisia	Second	3	22,533.00
	Fourth	2	19,274.55
	Fifth	6	60,943.31
	Sixth	20	160,656.14
	Seventh	55	109,592.95

Government	Instalment	Total number of claims affected	Amount of increase US$
Turkey	Second	7	54,778.55
	Fourth	3	13,813.07
	Fifth	8	76,161.11
	Sixth	4	51,384.50
	Seventh	5	7,547.52
Tanzania	Sixth	1	7,302.14
Uganda	Sixth	1	67.62
United Kingdom of Great Britain and Northern Ireland	Second	15	98,402.37
	Fourth	29	224,662.80
	Fifth	55	460,882.39
	Sixth	103	780,493.31
	Seventh	105	449,284.96
United States of America	Second	16	146,826.69
	Fourth	18	152,100.06
	Fifth	55	539,602.45
	Sixth	87	815,170.15
	Seventh	58	218,244.81
Vietnam	Sixth	1	7,874.01
Yemen	Second	14	28,866.28
	Fifth	14	90,813.21
	Sixth	48	91,599.22
	Seventh	69	54,600.70
Yugoslavia, Federal Republic of	Second	1	7,787.62
	Fourth	1	5,812.11
	Sixth	3	21,410.97
	Seventh	1	312.07
UNDP Jerusalem	Second	1	13,900.21
	Fifth	2	24,354.59
	Sixth	17	180,727.91
	Seventh	4	10,585.00
UNDP Kuwait	Sixth	3	23,670.94
	Seventh	1	2,723.87
UNDP Washington	Second	3	29,780.47
	Fifth	3	28,445.66
	Sixth	4	25,358.38
	Seventh	1	1,174.12
UNDP Yemen	Second	2	2,292.26
	Sixth	1	4009.56
	Seventh	1	252.63

Government	Instalment	Total number of claims affected	Amount of increase US$
UNHCR Canada	Fifth	2	24,007.37
	Sixth	5	48,493.48
UNHCR Geneva	Second	1	2,333.55
	Fourth	1	6,540.29
UNRWA Gaza	Second	4	28,347.38
	Fifth	1	14,365.38
	Sixth	16	183,969.43
	Seventh	26	41,019.18
Total		21,491	63,777,771.37

2. Transfer of loss elements from duplicate claims to the related processed claims

9. Pursuant to the direction of the category "C" Panel in its seventh report (S/AC.26/1999/11, paras. 54 to 59), the secretariat transferred loss element data contained in 198 duplicate claims to the corresponding processed claims that were missing the relevant data. Following the transfer of this data, the claims were then reprocessed. The claim awards for the 198 claims have been revised accordingly, with a total increased award amount of US$1,940,190.27.

Table 3. Results of the transfer of missing loss element data

Government	Instalment	Total number of claims affected	Amount of increase US$
Egypt	Fourth	2	50,968.59
	Sixth	172	1,679,577.78
	Seventh	8	79,293.98
India	Sixth	4	24,186.91
Jordan	Second	1	3,633.22
	Fourth	1	6,574.39
	Sixth	3	43,841.93
	Seventh	5	32,967.13
Pakistan	Seventh	1	16,850.63
Philippines	Seventh	1	2,295.71
Total		198	1,940,190.27

3. Correction of technical defects in claims for C6-Salary losses

10. Through the ongoing application of the methodology developed by the Panel in its sixth instalment report (S/AC.26/1998/6, paragraphs 28 to 35), the secretariat identified an additional 663 claims as being eligible for

C6-Salary losses. These claims were originally determined to be not eligible for compensation due to the fact that the electronic claim form did not indicate the country of employment as either Iraq or Kuwait. Based on the methodology developed by the Panel, the secretariat conducted a review of those claims where the relevant field had not been completed. As a result of that review, the secretariat was able to determine from other information contained in the claim form that the claimants were either employed in Iraq or Kuwait or were otherwise eligible for compensation for C6-Salary losses.

11. The C6-Salary corrections have resulted in a total increase of US$4,774,638.23.

Table 4. Corrections of C6-Salary losses

Government	Instalment	Total number of claims affected	Amount of increase US$
Egypt	Sixth	655	4,685,774.38
Israel	Sixth	3	23,093.75
	Seventh	5	65,770.10
Totals		663	4,774,638.23

5. Other miscellaneous category "C" claims corrections

12. In the course of entering the loss element and recommendation data for the 2,873 claims in the first instalment into electronic format, the secretariat discovered that, due to a typographical error, one claim for a motor vehicle loss ("C4-MV") for which the category "C" Panel had awarded compensation in the first instalment had been inadvertently omitted from the first instalment results. As a result, the award amount for one claim for the United States should be increased by US$8,377.00.

13. In the course of its review of the C6-Salary losses, as identified in paragraphs 10-11, supra, the secretariat detected typographical errors in three claims previously reported to Israel. As a result, one claim for C4-CPHO losses that was reported in the sixth instalment and two claims for mental pain and anguish resulting from serious personal injury ("C2-MPA") that were reported in the seventh instalment have been corrected.

14. Pursuant to the revised methodology for loss of support claims ("C3-Support" losses), established by the Panel in its report on the seventh instalment (S/AC.26/1999/11, paragraphs 160 to 176), eight claims reported in the first instalment that were found to have other eligible claimants in the seventh instalment for the same C3-Support losses, have had their award amounts recalculated and reapportioned equally among all eligible claimants.

15. As a result of the recalculation of award amounts for C3-Support losses, claims for mental pain and anguish located on page "C3" of the claim form ("C3-MPA" losses) for seven of the eight claims were also recalculated in order to take into account the additional family members identified in the seventh instalment.

16. At the request of the Government of Canada and with the agreement of the United Nations Development Programme (UNDP) in Yemen, one claim submitted by UNDP Yemen and approved in the sixth instalment has been transferred to the Government of Canada.
17.

Table 5. Correction of submitting entity

Country or international organization	Number of claims reported	Previous total recommended award (US$)	Corrected number of claims	Corrected total recommended award (US$)
Canada	240	9,019,289.33	241	9,036,904.12
UNDP Yemen	19	240,087.73	18	222,472.94

18. Based on the above miscellaneous corrections, the following table identifies the net increase in award amounts.

19. Based on the above miscellaneous corrections, the following table identifies the net increase in award amounts.

Table 6. Miscellaneous category "C" claims corrections

Government	Instalment	Total number of claims affected	Amount of net increase (US$) a/
Israel	Sixth	1	22,101.16
	Seventh	2	7,500.00
Kuwait	First	6	15,380.00
United Kingdom of Great Britian and Northern Ireland	First	1	0.00
United States of America	First	2	8,377.00
Total		12	53,358.16

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a/ Most calculated amounts for C3-Support had exceeded the US$100,000 category limitation prior to correction. When the corrected calculations also exceeded US$100,000, there was no net effect on actual awards for first instalment claimants.

20. The adjusted claim awards and the total revised recommended awards for category "C" claims are located in tables 1-8 of annex II.

III. OTHER CORRECTIONS

21. Due to a clerical error, a correction to the text of the report and recommendations made by the Panel of Commissioners concerning the seventh instalment of individual claims for damages up to US$100,000 (category "C" claims) (S/AC.26/1999/11) is required:

(a) Paragraph 317(b) of the report should read:

"for an amount claimed in excess of US$20,000, the total award should be 96 per cent of the amount claimed"; and

(b) Paragraph 318(b) of the report should read:

"for an amount claimed in excess of US$20,000, the total award should be 90 per cent of the amount claimed".

22. This correction has no effect on the recommended claim awards reported, as the calculations applied by the category "C" Panel of Commissioners were based on the methodology as described therein.

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Annex I

CORRECTED CATEGORY "A" CLAIM AWARDS

1. Based on the corrections reported in paragraphs 2 and 3, supra, the category "A" claims aggregate corrected amounts per country, by claim instalment, are as follows:

Table 1. Fifth instalment category "A" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Algeria	19,500.00	18,000.00
Bangladesh	52,561,500.00	52,276,500.00
Egypt	217,268,500.00	216,586,000.00
Ethiopia	226,500.00	171,000.00
Finland	23,000.00	20,000.00
France	133,500.00	130,500.00
Germany	37,000.00	34,000.00
India	150,113,000.00	147,801,500.00
Iran	3,835,500.00	3,736,500.00
Jordan	17,425,000.00	17,213,500.00
Kuwait	39,883,500.00	39,876,000.00
Pakistan	23,185,000.00	22,955,500.00
Sudan	38,721,500.00	38,636,000.00
Syrian Arab Republic	27,003,000.00	26,775,000.00
Tanzania	49,000.00	44,500.00
Thailand	10,631,000.00	10,592,000.00
Tunisia	338,500.00	329,500.00
Yemen	29,208,500.00	29,045,000.00
UNDP Jerusalem	75,500.00	72,500.00
UNHCR Canada	64,000.00	55,000.00
UNRWA Gaza	754,000.00	736,000.00

Table 2. Sixth instalment category "A" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Bahrain	28,500.00	27,000.00
Bangladesh	66,288,500.00	65,943,500.00
Canada	67,000.00	64,000.00
Egypt	18,711,000.00	18,651,000.00
Ethiopia	94,000.00	77,500.00

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
France	24,500.00	23,000.00
India	17,978,000.00	17,418,500.00
Iran	5,626,500.00	5,565,000.00
Jordan	18,735,000.00	17,527,500.00
Kuwait	17,166,500.00	17,136,500.00
Mauritius	4,000.00	2,500.00
Morocco	2,575,000.00	2,561,500.00
Netherlands	8,000.00	5,000.00
Pakistan	46,859,500.00	46,279,000.00
Philippines	60,951,000.00	60,810,000.00
Poland	2,038,000.00	2,032,000.00
Republic of Korea	63,500.00	60,500.00
Syrian Arab Republic	5,285,500.00	5,176,000.00
Thailand	2,260,500.00	2,248,500.00
The former Yugoslav Republic of Macedonia	12,000.00	10,500.00
Tunisia	1,891,500.00	1,824,000.00
Turkey	1,554,000.00	1,552,500.00
Yemen	1,859,500.00	1,841,500.00
UNDP Washington	4,000.00	2,500.00
UNDP Yemen	799,000.00	695,500.00
UNRWA Gaza	47,000.00	42,500.00

2. Based on the above corrections, the revised category "A" claim total recommended awards by instalment are as follows:

Table 3. Revised total recommended awards for category "A" claims

Instalment	Previous total recommended award (US$) a/	Corrected total recommended award (US$)
First	189,633,000.00	189,633,000.00
Second	641,352,500.00	641,352,500.00
Third	531,571,000.00	531,571,000.00
Fourth	734,839,000.00	734,839,000.00
Fifth	789,843,000.00	785,391,000.00
Sixth	320,542,000.00	317,188,000.00
Special	2,554,500.00	2,554,500.00

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a/ The previous total recommended award amounts in this column include the initial awards approved by the Governing Council in its

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decisions 22, 28, 29, 31, 33, 38 and 67 (S/AC.26/Dec.22 (1994), S/AC.26/Dec.28 (1995), S/AC.26/Dec.29 (1995), S/AC.26/Dec.31 (1995), S/AC.26/Dec.33 (1995), S/AC.26/Dec.38 (1996) and S/AC.26/Dec.67 (1999)) and subsequent corrections approved by the Governing Council in its decisions 42, 44, 51, 54, 57, 71 and 79 (S/AC.26/Dec.42 (1997), S/AC.26/Dec.44 (1997), S/AC.26/Dec.51 (1998), S/AC.26/Dec.54 (1998), S/AC.26/Dec.57 (1998), S/AC.26/Dec.71 (1999) and (S/AC.26/Dec.79 (1999).

Annex II

CORRECTED CATEGORY "C" CLAIM AWARDS

1. Based on the corrections reported in paragraphs 4-18, supra, the category "C" claims aggregate corrected amounts per country, by claim instalment, are as follows:

Table 1. First instalment category "C" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$) a/
Kuwait	11,387,878.00	11,403,258.00
United Kingdom of Great Britain and Northern Ireland	5,310,759.00	no net change
United States of America	10,514,246.00	10,522,623.00

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a/ Most calculated amounts for C3-Support had exceeded the US$100,000 category limitation prior to correction. When the corrected calculations also exceeded US$100,000, there was no net effect on actual awards for first instalment claimants.

Table 2. Second instalment category "C" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Algeria	37,114.35	46,545.60
Bangladesh	12,075,690.51	12,161,510.90
Belgium	61,039.01	75,347.64
Bosnia-Herzegovina	108,334.70	115,623.54
Bulgaria	221,970.34	223,320.23
Canada	3,858,309.58	4,023,006.62
Czech Republic	597,251.57	602,466.46
Egypt	131,970,764.32	133,858,483.49
Germany	240,543.56	245,797.13
Hungary	284,051.27	300,834.96
India	68,214,211.58	70,365,172.62
Iran, Islamic Republic of	3,473,975.51	3,600,921.62
Ireland	312,920.95	328,891.47
Israel	38,710.74	51,454.01
Jordan	38,175,535.58	38,667,291.51

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Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Lebanon	26,145,188.38	26,532,492.94
Mauritius	42,073.53	46,905.09
Morocco	36,573.30	42,205.30
Niger	12,182.40	12,859.80
Nigeria	51,781.38	57,643.21
Pakistan	2,084,889.72	2,112,705.12
Philippines	1,315,241.12	1,329,974.64
Poland	2,192,825.30	2,226,373.57
Republic of Korea	294,728.17	303,233.11
Sierra Leone	92,314.38	105,579.01
Sri Lanka	687,376.12	717,578.88
Sudan	5,102,065.15	5,217,538.58
Sweden	645,202.97	705,635.71
Thailand	198,090.17	199,087.58
Tunisia	626,575.96	649,108.96
Turkey	1,790,473.80	1,845,252.36
United Kingdom of Great Britain and Northern Ireland	4,571,331.91	4,669,734.28
United States of America	4,851,112.78	4,997,939.56
Yemen	2,880,796.23	2,909,662.60
Yugoslavia, Federal Republic of	248,582.62	256,370.24
UNDP Jerusalem	620,982.03	634,882.24
UNDP Washington	241,798.27	271,578.74
UNDP Yemen	654,706.32	656,998.58
UNHCR Geneva	37,760.87	40,094.41
UNRWA Gaza	740,395.05	768,742.42

Table 3. Third instalment category "C" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Egypt	115,378,505.21	116,485,154.77

Table 4. Fourth instalment category "C" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Australia	122,481.32	136,907.94
Bangladesh	782,755.06	786,885.44
Bulgaria	85,558.62	86,316.24
Czech Republic	155,531.10	159,147.11
Egypt	119,711,643.43	124,933,836.21
France	492,132.20	493,887.55
Germany	566,928.16	582,506.02
Hungary	123,238.70	125,481.42
India	44,851,833.72	45,880,225.91
Ireland	502,371.34	510,114.55
Japan	851,168.11	876,640.94
Jordan	23,857,531.37	24,207,836.54
Kuwait	409,227,615.37	418,485,571.52
Mauritius	25,647.68	29,351.10
New Zealand	79,478.21	80,670.20
Pakistan	11,812,923.50	12,007,471.90
Philippines	712,314.51	727,345.97
Poland	243,154.44	255,588.27
Slovakia	60,003.67	61,191.14
Tunisia	156,314.93	175,589.48
Turkey	1,257,021.33	1,270,834.40
United Kingdom of Great Britain and Northern Ireland	13,005,244.53	13,229,907.33
United States of America	5,542,379.86	5,694,479.92
Yugoslavia, Federal Republic of	19,771.44	25,583.55
UNHCR Geneva	21,249.45	27,789.74

Table 5. Fifth instalment category "C" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Algeria	27,036.50	27,170.28
Australia	114,460.74	115,024.49
Austria	20,789.17	27,584.79
Bahrain	75,675.21	83,863.56

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Bangladesh	9,772,278.32	10,034,196.94
Canada	974,360.88	1,273,176.89
Chad	4,616.79	9,794.93
Croatia	36,847.76	47,765.10
Czech Republic	134,365.26	146,524.31
Egypt	85,050,545.00	86,189,253.95
France	173,929.82	213,498.11
Germany	168,194.58	219,048.65
Greece	67,924.84	83,452.91
Hungary	60,841.05	66,830.87
India	65,200,543.03	67,698,665.21
Iran, Islamic Republic of	468,658.75	602,741.40
Ireland	84,478.70	93,382.06
Italy	85,401.04	97,133.94
Japan	15,904.82	24,281.69
Jordan	92,708,375.12	94,089,135.96
Kuwait	324,811,289.59	329,215,788.04
Lebanon	2,266,094.07	2,408,758.24
Morocco	59,554.30	76,949.61
Netherlands	57,180.05	64,413.86
New Zealand	39,669.72	64,413.86
Pakistan	7,577,923.64	7,859,267.78
Philippines	7,733,835.78	7,871,819.05
Poland	31,433.14	44,469.44
Republic of Korea	123,601.31	174,309.52
Sri Lanka	2,220,398.06	2,332,665.91
Sudan	15,548,269.29	15,959,540.47
Sweden	34,874.88	56,524.80
Syrian Arab Republic	99,451,240.61	100,327,919.47
Thailand	60,134.54	66,622.08
Tunisia	204,829.96	267,192.79
Turkey	223,531.45	303,324.64
United Kingdom of Great Britain and Northern Ireland	2,169,078.28	2,647,548.89
United States of America	2,018,256.74	2,566,737.35
Yemen	562,016.48	652,829.69
Yugoslavia, Federal Republic of	840.17	2,628.12

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Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
UNDP Jerusalem	82,928.25	110,768.10
UNDP Washington	148,196.89	178,269.71
UNHCR Canada	52,787.08	76,794.45
UNRWA Gaza	25,993.46	40,358.84

Table 6. Sixth instalment category "C" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Algeria	219,416.53	240,652.38
Australia	1,329,423.45	1,399,064.45
Austria	766,921.27	796,772.24
Bangladesh	21,008,549.75	21,453,766.13
Belgium	128,595.47	132,373.22
Bulgaria	446,062.03	465,000.02
Canada	9,019,289.33	9,327,549.62
China	235,396.65	243,875.86
Croatia	168,945.18	186,185.48
Czech Republic	85,692.53	86,125.43
Denmark	199,555.86	211,959.79
Egypt	89,431,308.21	97,707,560.65
Ethiopia	1,091,293.09	1,094,296.59
France	2,698,702.88	2,759,807.87
Germany	1,802,402.49	1,883,483.65
Greece	462,643.74	478,472.23
Hungary	495,425.51	497,555.99
India	101,556,613.24	104,814,938.57
Iran, Islamic Republic of	12,339,925.67	12,651,680.06
Ireland	1,270,494.10	1,327,307.88
Israel	132,392.01	177,586.52
Italy	942,036.00	979,859.67
Japan	402,369.09	415,840.98
Jordan	177,883,052.22	180,418,308.14

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Morocco	254,615.48	264,799.39
Netherlands	923,040.68	967,778.95
New Zealand	205,431.90	215,125.66
Norway	74,629.67	87,803.96
Pakistan	36,633,099.83	37,330,539.19
Philippines	10,479,739.00	10,691,744.59
Poland	1,849,654.38	1,933,492.85
Republic of Korea	789,994.40	847,931.58
Senegal	421,540.11	425,224.98
Somalia	10,035,104.93	10,048,445.16
Spain	251,308.76	267,255.38
Sri Lanka	3,740,581.52	3,851,072.75
Sudan	21,206,529.60	21,744,728.88
Sweden	1,138,633.52	1,219,711.70
Switzerland	324,014.12	336,684.52
Syrian Arab Republic	93,379,748.64	95,547,753.26
Thailand	356,225.66	374,468.30
Tunisia	3,174,407.90	3,337,545.82
Turkey	1,739,853.38	1,794,550.10
Tanzania	153,833.35	161,135.49
Uganda	114,452.10	114,519.72
United Kingdom of Great Britain and Northern Ireland	21,402,912.18	22,200,180.09
United States of America	16,729,316.41	17,569,949.12
Vietnam	58,985.84	66,859.85
Yemen	13,028,007.79	13,120,082.14
Yugoslavia, Federal Republic of	317,492.86	338,903.83
UNDP Jerusalem	3,336,281.75	3,517,697.66
UNDP Kuwait	10,234,516.95	10,258,187.89
UNDP Washington	786,515.47	814,189.92
UNDP Yemen	240,087.73	231,113.79
UNHCR Canada	902,601.67	958,580.14

Table 7. Seventh instalment category "C" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Afghanistan	6,546,539.61	6,678,681.22
Algeria	695,540.82	699,472.97
Australia	1,702,771.53	1,724,954.90
Bangladesh	37,554,395.74	37,706,783.84
Canada	11,857,638.70	11,943,883.83
China	124,658.70	125,249.57
Croatia	192,329.35	193,451.02
Denmark	144,690.81	151,894.16
Egypt	228,574,373.13	231,251,021.36
Finland	297,969.31	298,228.83
France	6,534,238.54	6,589,534.21
Germany	2,220,488.11	2,241,250.07
India	185,773,000.03	186,796,893.79
Iran, Islamic Republic of	26,975,073.39	27,084,712.23
Ireland	1,265,251.55	1,276,995.53
Israel	4,821,126.19	4,943,872.86
Italy	1,440,604.82	1,449,827.62
Jordan	279,894,629.49	281,071,994.02
Kuwait	784,934,659.15	787,212,263.25
Lebanon	15,514,902.72	15,615,066.66
Mauritius	163,472.65	165,260.45
Morocco	769,485.67	773,786.81
Netherlands	814,269.57	821,067.26
New Zealand	237,824.47	238,597.59
Nigeria	271,732.67	274,275.83
Norway	22,092.68	22,465.73
Pakistan	72,220,012.40	72,551,534.16
Philippines	10,254,242.61	10,343,737.26
Sierra Leone	42,433.14	47,233.90
Slovakia	69,466.82	69,535.66
Somalia	1,180,810.34	1,185,835.33

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Thailand	912,347.94	913,404.75
Tunisia	8,305,384.84	8,414,977.79
Turkey	2,525,646.17	2,533,193.69
United Kingdom of Great Britain and Northern Ireland	28,429,392.05	28,867,341.93
United States of America	15,758,081.21	15,971,771.68
Yemen	79,127,855.58	79,177,795.01
Yugoslavia, Federal Republic of	148,194.04	148,506.11
UNDP Jerusalem	4,324,195.44	4,334,780.44
UNDP Kuwait	891,369.68	894,093.55
UNDP Washington	1,130,475.75	1,131,649.87
UNDP Yemen	681,255.41	681,508.04
UNRWA Gaza	6,757,977.27	6,796,892.02

2. Based on the above corrections, the revised category "C" claim total recommended awards by instalment are as follows:

Table 8. Revised total recommended awards for category "C" claims

Instalment	Previous total recommended award (US$) a/	Corrected total recommended award (US$)
First	51,062,722.00	51,086,479.80
Second	425,014,002.19	431,155,375.79
Third	323,776,502.96	324,883,154.77
Fourth	637,671,574.27	654,256,442.61
Fifth	720,924,558.14	734,670,391.22
Sixth	739,730,850.90	763,011,685.12
Seventh	1,918,413,948.51	1,926,144,235.51

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a/ The previous total recommended award amounts in this column include the initial awards approved by the Governing Council in its decisions 25, 36, 37, 39, 41, 52 and 70 (S/AC.26/Dec.25 (1994), S/AC.26/Dec.36 (1996), S/AC.26/Dec.37 (1996),

Annex X

Decision concerning the correction of awards for category A and C claims and other corrections pursuant to article 41 of the Provisional Rules for Claims Procedure taken by the Governing Council of the United Nations Compensation Commission at its 92nd meeting, held at Geneva on 9 December 1999*

The Governing Council,

Having received, in accordance with article 41 of the Provisional Rules For Claims Procedure (S/AC.26/1992/10) ("the Rules"), a report 1/ by the Executive Secretary concerning the correction of awards for claims in categories "A" and "C" and clerical corrections to an approved category "C" report,

1. *Decides*, pursuant to article 41 of the Rules, to correct the amounts of the approved awards for Governments and international organizations. 2/ The aggregate corrected amounts per country and instalment, are as follows:

Table 1. *Fifth instalment category "A" claims corrections*

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Algeria	19,500.00	18,000.00
Bangladesh	52,561,500.00	52,276,500.00

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* Previously issued as document S/AC.26/Dec.85 (1999).

[1] The text of the report appears in document S/AC.26/1999/25 (annex IX above).

[2] In conformity with the provisions on confidentiality in the Provisional Rules for Claims Procedure (articles 30, paragraph 1, and 40, paragraph 5), a

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Egypt	217,268,500.00	216,586,000.00
Ethiopia	226,500.00	171,000.00
Finland	23,000.00	20,000.00
France	133,500.00	130,500.00
Germany	37,000.00	34,000.00
India	150,113,000.00	147,801,500.00
Iran, Islamic Republic of	3,835,500.00	3,736,500.00
Jordan	17,425,000.00	17,213,500.00
Kuwait	39,883,500.00	39,876,000.00
Pakistan	23,185,000.00	22,955,500.00
Sudan	38,721,500.00	38,636,000.00
Syrian Arab Republic	27,003,000.00	26,775,000.00
Tanzania	49,000.00	44,500.00
Thailand	10,631,000.00	10,592,000.00
Tunisia	338,500.00	329,500.00
Yemen	29,208,500.00	29,045,000.00
UNDP Jerusalem	75,500.00	72,500.00
UNHCR Canada	64,000.00	55,000.00
UNRWA Gaza	754,000.00	736,000.00

Table 2. Sixth instalment category "A" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Bahrain	28,500.00	27,000.00
Bangladesh	66,288,500.00	65,943,500.00
Canada	67,000.00	64,000.00
Egypt	18,711,000.00	18,651,000.00
Ethiopia	94,000.00	77,500.00
France	24,500.00	23,000.00
India	17,978,000.00	17,418,500.00
Iran, Islamic Republic of	5,626,500.00	5,565,000.00
Jordan	18,735,000.00	17,527,500.00
Kuwait	17,166,500.00	17,136,500.00
Mauritius	4,000.00	2,500.00
Morocco	2,575,000.00	2,561,500.00

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Philippines	60,951,000.00	60,810,000.00
Poland	2,038,000.00	2,032,000.00
Republic of Korea	63,500.00	60,500.00
Syrian Arab Republic	5,285,500.00	5,176,000.00
Thailand	2,260,500.00	2,248,500.00
The former Yugoslav Republic of Macedonia	12,000.00	10,500.00
Tunisia	1,891,500.00	1,824,000.00
Turkey	1,554,000.00	1,552,500.00
Yemen	1,859,500.00	1,841,500.00
UNDP Washington	4,000.00	2,500.00
UNDP Yemen	799,000.00	695,500.00
UNRWA Gaza	47,000.00	42,500.00

Table 3. First instalment category "C" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$) a/
Kuwait	11,387,878.00	11,403,258.00
United Kingdom of Great Britain and Northern Ireland	5,310,759.00	no net change
United States of America	10,514,246.00	10,522,623.00

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a/ Most calculated amounts for C3-Support had exceeded the US$100,000 category limitation prior to correction. When the corrected calculations also exceeded US$100,000, there was no net effect on actual awards for first instalment claimants.

Table 4. Second instalment category "C" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Algeria	37,114.35	46,545.60
Bangladesh	12,075,690.51	12,161,510.90
Belgium	61,039.01	75,347.64

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Czech Republic	597,251.57	602,466.46
Egypt	131,970,764.32	133,858,483.49
Germany	240,543.56	245,797.13
Hungary	284,051.27	300,834.96
India	68,214,211.58	70,365,172.62
Iran, Islamic Republic of	3,473,975.51	3,600,921.62
Ireland	312,920.95	328,891.47
Israel	38,710.74	51,454.01
Jordan	38,175,535.58	38,667,291.51
Lebanon	26,145,188.38	26,532,492.94
Mauritius	42,073.53	46,905.09
Morocco	36,573.30	42,205.30
Niger	12,182.40	12,859.80
Nigeria	51,781.38	57,643.21
Pakistan	2,084,889.72	2,112,705.12
Philippines	1,315,241.12	1,329,974.64
Poland	2,192,825.30	2,226,373.57
Republic of Korea	294,728.17	303,233.11
Sierra Leone	92,314.38	105,579.01
Sri Lanka	687,376.12	717,578.88
Sudan	5,102,065.15	5,217,538.58
Sweden	645,202.97	705,635.71
Thailand	198,090.17	199,087.58
Tunisia	626,575.96	649,108.96
Turkey	1,790,473.80	1,845,252.36
United Kingdom of Great Britain and Northern Ireland	4,571,331.91	4,669,734.28
United States of America	4,851,112.78	4,997,939.56

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
UNDP Washington	241,798.27	271,578.74
UNDP Yemen	654,706.32	656,998.58
UNHCR Geneva	37,760.87	40,094.41
UNRWA Gaza	740,395.05	768,742.42

Table 5. Third instalment category "C" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Egypt	115,378,505.21	116,485,154.77

Table 6. Fourth instalment category "C" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Australia	122,481.32	136,907.94
Bangladesh	782,755.06	786,885.44
Bulgaria	85,558.62	86,316.24
Czech Republic	155,531.10	159,147.11
Egypt	119,711,643.43	124,933,836.21
France	492,132.20	493,887.55
Germany	566,928.16	582,506.02
Hungary	123,238.70	125,481.42
India	44,851,833.72	45,880,225.91
Ireland	502,371.34	510,114.55
Japan	851,168.11	876,640.94
Jordan	23,857,531.37	24,207,836.54
Kuwait	409,227,615.37	418,485,571.52
Mauritius	25,647.68	29,351.10
New Zealand	79,478.21	80,670.20
Pakistan	11,812,923.50	12,007,471.90
Philippines	712,314.51	727,345.97

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Turkey	1,267,482.33	1,270,834.40
United Kingdom of Great Britain and Northern Ireland	13,005,244.53	13,229,907.33
United States of America	5,542,379.86	5,694,479.92
Yugoslavia, Federal Republic of	19,771.44	25,583.55
UNHCR Geneva	21,249.45	27,789.74

Table 7. Fifth instalment category "C" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Algeria	27,036.50	27,170.28
Australia	114,460.74	115,024.49
Austria	20,789.17	27,584.79
Bahrain	75,675.21	83,863.56
Bangladesh	9,772,278.32	10,034,196.94
Canada	974,360.88	1,273,176.89
Chad	4,616.79	9,794.93
Croatia	36,847.76	47,765.10
Czech Republic	134,365.26	146,524.31
Egypt	85,050,545.00	86,189,253.95
France	173,929.82	213,498.11
Germany	168,194.58	219,048.65
Greece	67,924.84	83,452.91
Hungary	60,841.05	66,830.87
India	65,200,543.03	67,698,665.21
Iran, Islamic Republic of	468,658.75	602,741.40
Ireland	84,478.70	93,382.06
Italy	85,401.04	97,133.94

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Lebanon	2,266,094.07	2,408,758.24
Morocco	59,554.30	76,949.61
Netherlands	57,180.05	64,413.86
New Zealand	39,669.72	64,413.86
Pakistan	7,577,923.64	7,859,267.78
Philippines	7,733,835.78	7,871,819.02
Poland	31,433.14	44,469.44
Republic of Korea	123,601.31	174,309.52
Sri Lanka	2,220,398.86	2,332,665.91
Sudan	15,548,269.29	15,959,540.47
Sweden	34,874.88	56,524.80
Syrian Arab Republic	99,451,240.61	100,327,919.47
Thailand	60,134.54	66,622.08
Tunisia	204,829.96	267,192.79
Turkey	223,531.45	303,324.64
United Kingdom of Great Britain and Northern Ireland	2,169,078.28	2,647,548.89
United States of America	2,018,256.74	2,566,737.35
Yemen	562,016.48	652,829.69
Yugoslavia, Federal Republic of	840.17	2,628.12
UNDP Jerusalem	82,928.25	110,768.10
UNDP Washington	148,196.89	178,269.71
UNHCR Canada	52,787.08	76,794.45
UNRWA Gaza	25,993.46	40,358.84

Table 8. Sixth instalment category "C" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Algeria	219,416.53	240,652.38

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Belgium	128,595.47	132,373.22
Bulgaria	446,062.03	465,300.02
Canada	9,019,289.33	9,327,549.62
China	235,396.65	243,875.86
Croatia	168,945.18	186,185.48
Czech Republic	85,692.53	86,125.43
Denmark	199,555.86	211,959.79
Egypt	89,431,308.21	97,707,560.65
Ethiopia	1,091,293.09	1,094,296.59
France	2,698,702.88	2,759,807.87
Germany	1,802,402.49	1,883,483.65
Greece	462,643.74	478,472.23
Hungary	495,425.51	497,555.99
India	101,556,613.24	104,814,938.57
Iran, Islamic Republic of	12,339,925.67	12,651,680.06
Ireland	1,270,494.10	1,327,307.88
Israel	132,392.01	177,586.52
Italy	942,036.00	979,859.67
Japan	402,369.09	415,840.98
Jordan	177,883,052.22	180,418,308.14
Kenya	22,789.72	26,347.87
Kuwait	45,197,094.88	45,917,987.69
Lebanon	11,476,497.37	11,852,210.70
Malta	39,025.32	41,050.02
Mauritius	107,486.80	113,296.56
Morocco	254,615.48	264,799.39
Netherlands	923,040.68	967,778.95
New Zealand	205,431.90	215,125.66

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Republic of Korea	789,994.40	847,931.58
Senegal	421,540.11	425,224.98
Somalia	10,035,104.93	10,048,445.16
Spain	251,308.76	267,255.38
Sri Lanka	3,740,581.52	3,851,072.75
Sudan	21,206,529.60	21,744,728.88
Sweden	1,138,633.52	1,219,711.70
Switzerland	324,014.12	336,684.52
Syrian Arab Republic	93,379,748.64	95,547,753.26
Thailand	356,225.66	374,468.30
Tunisia	3,174,407.90	3,337,545.82
Turkey	1,739,853.38	1,794,550.10
Tanzania	153,833.35	161,135.49
Uganda	114,452.10	114,519.72
United Kingdom of Great Britain and Northern Ireland	21,402,912.18	22,200,180.09
United States of America	16,729,316.41	17,569,949.12
Vietnam	58,985.84	66,859.85
Yemen	13,028,007.79	13,120,082.14
Yugoslavia, Federal Republic of	317,492.86	338,903.83
UNDP Jerusalem	3,336,281.75	3,517,697.66
UNDP Kuwait	10,234,516.95	10,258,187.89
UNDP Washington	786,515.47	814,189.92
UNDP Yemen	240,087.73	231,113.79
UNHCR Canada	902,601.67	958,580.14
UNRWA Gaza	2,438,631.62	2,623,050.49

Table 9. Seventh instalment category "C" claims corrections

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Afghanistan	6,546,539.61	6,678,681.22
Algeria	695,540.82	699,472.97

Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Australia	1,702,771.53	1,724,954.90
Bangladesh	37,554,395.74	37,706,783.84
Canada	11,857,638.70	11,943,883.83
China	124,658.70	125,249.57
Croatia	192,329.35	193,451.02
Denmark	144,690.81	151,894.16
Egypt	228,574,373.13	231,251,021.36
Finland	297,969.31	298,228.83
France	6,534,238.54	6,589,534.21
Germany	2,220,488.11	2,241,250.07
India	185,773,000.03	186,796,893.79
Iran, Islamic Republic of	26,975,073.39	27,084,712.23
Ireland	1,265,251.55	1,276,995.53
Israel	4,821,126.19	4,943,872.86
Italy	1,440,604.82	1,449,827.62
Jordan	279,894,629.49	281,071,994.02
Kuwait	784,934,659.15	787,212,263.25
Lebanon	15,514,902.72	15,615,066.66
Mauritius	163,472.65	165,260.45
Morocco	769,485.67	773,786.81
Netherlands	814,269.57	821,067.26
New Zealand	237,824.47	238,597.59
Nigeria	271,732.67	274,275.83
Norway	22,092.68	22,465.73
Pakistan	72,220,012.40	72,551,534.16
Philippines	10,254,242.61	10,343,737.26
Sierra Leone	42,433.14	47,233.90
Slovakia	69,466.82	69,535.66
Somalia	1,180,810.34	1,185,835.33
Spain	147,896.97	151,740.64
Sri Lanka	5,187,819.35	5,287,797.86
Sudan	14,740,586.11	14,812,062.58

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Country or international organization	Previous total recommended award (US$)	Corrected total recommended award (US$)
Sweden	935,577.80	935,610.32
Syrian Arab Republic	56,697,373.20	56,939,952.32
Thailand	912,347.94	913,404.75
Tunisia	8,305,384.84	8,414,977.79
Turkey	2,525,646.17	2,533,193.69
United Kingdom of Great Britain and Northern Ireland	28,429,392.05	28,867,341.93
United States of America	15,758,081.21	15,971,771.68
Yemen	79,127,855.58	79,177,795.01
Yugoslavia, Federal Republic of	148,194.04	148,506.11
UNDP Jerusalem	4,324,195.44	4,334,780.44
UNDP Kuwait	891,369.68	894,093.55
UNDP Washington	1,130,475.75	1,131,649.87
UNDP Yemen	681,255.41	681,508.04
UNRWA Gaza	6,757,977.27	6,796,892.02

2. Based on the above corrections, the revised total recommended awards by instalment are as follows:

Table 10. Revised total recommended awards for category "A" claims

Instalment	Previous total recommended award (US$) a/	Corrected total recommended award (US$)
First	189,633,000.00	189,633,000.00
Second	641,352,500.00	641,352,500.00
Third	531,571,000.00	531,571,000.00
Fourth	734,839,000.00	734,839,000.00
Fifth	789,843,000.00	785,391,000.00
Sixth	320,542,000.00	317,188,000.00
Special	2,554,500.00	2,554,500.00

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a/ The previous total recommended award amounts in this column include the initial awards approved by the Governing Council in its decisions 22, 28, 29, 31, 33, 38 and 67 (S/AC.26/Dec.22 (1994), S/AC.26/Dec.28 (1995), S/AC.26/Dec.29 (1995), S/AC.26/Dec.31 (1995), S/AC.26/Dec.33 (1995), S/AC.26/Dec.38 (1996) and S/AC.26/Dec.67 (1999)) and subsequent corrections approved by the Governing Council in its decisions 42, 44, 51, 54, 57, 71 and 79 (S/AC.26/Dec.42 (1997), S/AC.26/Dec.44

(1997), S/AC.26/Dec.51 (1998), S/AC.26/Dec.54 (1998), S/AC.26/Dec.57 (1998), S/AC.26/Dec.71 (1999) and (S/AC.26/Dec.79 (1999).

Table 11. Revised total recommended awards for category "C" claims

Instalment	Previous total recommended award (US$) a/	Corrected total recommended award (US$)
First	51,062,722.00	51,086,479.00
Second	425,014,002.19	431,155,375.79
Third	323,776,502.96	324,883,154.77
Fourth	637,671,574.27	654,256,442.61
Fifth	720,924,558.14	734,670,391.22
Sixth	739,730,850.90	763,011,685.12
Seventh	1,918,413,948.51	1,928,144,235.51

a/ The previous total recommended award amounts in this column include the initial awards approved by the Governing Council in its decisions 25, 36, 37, 39, 41, 52 and 70 (S/AC.26/Dec.25 (1994), S/AC.26/Dec.36 (1996), S/AC.26/Dec.37 (1996), S/AC.26/Dec.39 (1996), S/AC.26/Dec. 41 (1997), S/AC.26/Dec.52 (1998) and S/AC.26/Dec.70 (1999)) and subsequent corrections approved by the Governing Council in its decisions 39, 41 and 52 (S/AC.26/Dec.39 (1996), S/AC.26/Dec.41 (1997) and S.AC.26/Dec.52 (1998)).

3. Decides, pursuant to article 41 of the Rules, to correct the report and recommendations made by the panel of Commissioners concerning the seventh instalment of individual claims for damages up to US$100,000 (category "C" claims) 3/ as follows:

(a) Paragraph 317(b) of the report should read:

"for an amount claimed in excess of US$20,000, the total award should be 96 per cent of the amount claimed"; and

(b) Paragraph 318(b) of the report should read:

"for an amount claimed in excess of US$20,000, the total award should be 90 per cent of the amount claimed",

4. Notes that this correction has no effect on the recommended claim awards reported, as the calculations applied by the category "C" Panel of Commissioners were based on the methodology as described in the report.

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[3] The text of this report appears in document S/AC.26/1999/11 (see S/1999/856, annex III).